

AGENDA ITEM VIII

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members **Date:** November 2, 2006
From: Christy Berger **Telephone:** (916) 574-7847
Legislation Analyst
**Subject: Agenda Item VIII. – Review and Possible Action on Proposed Amendments to
16CCR1803 Regarding Delegation to the Executive Officer**

Background

The executive officer is employed by the board and performs those duties and functions delegated by the board and specified by statute. Title 16, California Code of Regulations (CCR) Section 1803 explicitly delegates a number of functions related to enforcement processes to the executive officer including the ability to:

- File accusations
- Issue notices of hearing
- Issue statements of issues
- Receive and file notices of defense
- Issue subpoenas and subpoenas duces tecum;
- Set and calendar cases for hearing.

A recent case called into question the means by which an order to compel a psychiatric evaluation can be issued. Past practice at the BBS and other licensing boards was to have the order signed by the board chair. It was determined that such an order is an investigatory function and should not be performed by board members who serve as judges in the administrative adjudication process. Due process requires that the investigatory function and the adjudication function be separate and performed by different parties.

Subsequent to this determination, the board chair signed a general delegation to the executive officer to sign orders to compel a psychiatric evaluation. However, that delegation should be formalized by adding it to Section 1803.

History

At its November 2005 meeting, the board directed staff to pursue a regulation change to amend Section 1803 and delegate this function to the executive officer. Additional time for public comment was provided at the January 2006 meeting of the Policy and Advocacy Committee. The comment period for the proposed regulation initially closed on March 27, 2005.

At its April 2006 meeting, the Policy and Advocacy Committee recommended that the Board adopt slightly modified language that is in line with Section 820 of the Business and Professions Code, which permits “evaluation of a licensee’s physical or mental condition” as opposed to a “psychiatric evaluation.” The Board adopted this modified language at its May 18, 2006 meeting, and a 15-day notice was sent to stakeholders.

Several regulation hearings have been held in order to ensure the public has had adequate opportunity to comment on this proposal. The hearings were held on May 18, 2006 and July 27,

2006. An additional hearing was scheduled on October 4, 2006 out of an abundance of caution due to concerns expressed by the California Association of Marriage and Family Therapists (CAMFT) that the July hearing may not have been noticed properly. No stakeholders attended this hearing.

CAMFT has written several letters expressing concern that this proposal would delegate too much authority to one person, as well as other concerns. The Board's legal counsel prepared responses to the issues raised in CAMFT's letter, all of which are included in the rulemaking record. The full rulemaking record is included as an attachment.

Recommendation

Staff recommends that the Board move all of the following:

- The Board has considered and approved the Rulemaking Record.
- The Board approves and adopts the modified text for Section 1803 as its final language.
- The Board directs staff to file the Rulemaking Record with the Office of Administrative Law for final approval and filing with the Secretary of State.

Attachments

Rulemaking Record

Business and Professions Code Section 820 et seq.

ATTACHMENT

Agenda Item VIII

Proposed Language

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BOARD OF BEHAVIORAL SCIENCES
Modified Text

Amend Section 1803 of Division 18 of Title 16 as follows:

§1803. Delegation of Certain Functions

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note:

Authority cited: Sections 4980.60 and 4990.14, Business and Professions Code.

Reference: Sections 820, 4980.07, 4990.8 and 4990.13, Business and Professions Code; and Section 11500-11528, Government Code.

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ATTACHMENT

Agenda Item VIII

Rulemaking Record

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- X. May 18, 2006 Regulation Hearing (Board Meeting) Minutes
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- XIII. Written Comments
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CLOSING STATEMENT/CERTIFICATION

I, Paul Riches, am the agency official who compiled this rulemaking file with the assistance of my employees and agents.

I certify that I have complied with the requirements of Business and Professions Code Section 313.1.

I declare under penalty of perjury under the laws of the State of California that the record in this matter closed on _____. The file and this copy of the file are complete.

Executed this ____ day of _____ 2006 at Sacramento, California.

PAUL RICHES
Executive Officer

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BOARD OF BEHAVIORAL SCIENCES

Order of Adoption

The Board of Behavioral Sciences of the Department of Consumer Affairs hereby amends and adopts regulations in Division 18 of Title 16 of the California Code of Regulations, as follows:

Amend Section 1806 of Division 18 of Title 16 as follows:

§1803. Delegation of Certain Functions

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note:

Authority cited: Sections 4980.60 and 4990.14, Business and Professions Code.

Reference: Sections 820, 4980.07, 4990.8 and 4990.13, Business and Professions Code; and Section 11500-11528, Government Code.

Dated _____

PAUL RICHES
Executive Officer

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PART I

NOTICE OF PROPOSED CHANGES AND ORIGINALLY PROPOSED LANGUAGE

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TITLE 16 BOARD OF BEHAVIORAL SCIENCES DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments must be received by the Board at its office including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this notice not later than 5:00 p.m. on March 27, 2006. Any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.60 and 4990.14, Business and Professions Code, and to implement, interpret, or make specific Sections 820, 4980.07, 4990.8 and 4990.13 of the Business and Professions Code and Sections 11500-11528 of the Government Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Board proposes to adopt amendments to Section 1803 in Title 16 of the California Code of Regulations (CCR). This section pertains to the delegation of certain enforcement-related functions to the Board's executive officer.

Business and Professions (B&P) Code Section 820 permits the Board to order a licensee who is unable to practice his or her profession safely due to mental illness to be evaluated by one or more psychiatrists or psychologists. B&P Code Section 4990.8 permits the Board's executive officer to exercise powers and perform duties as delegated by the Board.

Title 16, CCR Section 1803 currently permits the Board's executive officer to file accusations, issue notices of hearing, issue statements of issues, receive and file notices of defense, issue subpoenas and subpoenas duces tecum, and set and calendar cases for hearing for Marriage and Family Therapists (MFT), Licensed Clinical Social Workers (LCSW), Licensed Educational Psychologists (LEP), MFT Interns, or Associate Clinical Social Workers.

The proposal would amend Section 1803 to allow the executive officer to additionally sign orders to compel a psychiatric evaluation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None
Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561
Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:
None.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulatory action would not affect small businesses. This proposal only makes a technical change in how psychiatric evaluations are ordered.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments in writing relevant to the above determinations to the address listed under Contact Person.

CONTACT PERSON

General or substantive inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christy Berger
Address: 1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7847
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

OR

Name: Mona Maggio
Address: 1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7830
Fax: 916-574-8625
Email: mona_maggio@bbs.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection from the Contact Person listed above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named above or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

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**BOARD OF BEHAVIORAL SCIENCES
PROPOSED LANGUAGE**

Amend Section 1803 of Division 18 of Title 16 as follows:

§1803. Delegation of Certain Functions

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling psychiatric examination in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Note:

Authority cited: Sections 4980.60 and 4990.14, Business and Professions Code.

Reference: Sections 820, 4980.07, 4990.8 and 4990.13, Business and Professions Code; and Section 11500-11528, Government Code.

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PART II

INITIAL STATEMENT OF REASONS

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**BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: N/A

SUBJECT MATTER OF PROPOSED REGULATIONS: DELEGATION OF AUTHORITY TO
COMPEL PSYCHIATRIC
EVALUATIONS

SECTIONS AFFECTED: Section 1803 of Division 18 of Title 16 of the California Code of Regulations

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

Section 1803 delegates a number of functions related to the Board's enforcement processes to the Board's executive officer.

The proposal would amend Section 1803 to additionally allow the executive officer to sign orders to compel a psychiatric evaluation of a Board licensee or registrant as part of an investigation of a complaint.

Past practice at the Board and other licensing boards was to have the order signed by the Board chair. However, it was determined that such an order is an investigatory function and should not be performed by Board members who also serve as judges in the administrative adjudication process. Due process requires that the investigatory function and the adjudication function be separate and performed by different parties.

FACTUAL BASIS/NECESSITY

This proposal is reasonably necessary in order to provide the Board's executive officer with the authority to sign orders to compel a psychiatric evaluation, as the executive officer does not currently have that authority.

UNDERLYING DATA / MATERIALS RELIED UPON:

None.

BUSINESS IMPACT

The proposed regulations will not have a significant adverse economic impact on businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

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PART III

STATEMENT REGARDING MAILING

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STATEMENT OF SERVICE BY MAIL

I certify that the Board of Behavioral Sciences has complied with the requirements of Government Code Section 11346.4(a)(1) through (4) and that the notice was mailed, and pursuant to Government Code Section 11340.85, sent by electronic communication on February 10, 2006.

DATED: 2/10/06


CHRISTY BERGER
Regulations Coordinator

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PART IV

**NOTICE OF AVAILABILITY OF MODIFIED LANGUAGE,
MODIFIED TEXT, AND STATEMENT RE: AVAILABILITY
OF LANGUAGE**

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AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences has proposed modifications to the text of Section 1803 in Title 16 of the California Code of Regulations which were the subject of a regulatory hearing on May 18, 2006. A copy of the modified text is enclosed. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Hilton San Diego Airport/Harbor Island, 1960 Harbor Island Drive, San Diego, California, 92101, at 1:00 p.m. on Thursday, July 27, 2006. Written comments must be received by the Board at its office including those sent by mail, facsimile, or email to the address listed under Contact Person in this notice not later than 5:00 p.m. on July 27, 2006, or must be received by the Board at the hearing.

Contact Person: Christy Berger
Board of Behavioral Sciences
1625 North Market Blvd Suite S200
Sacramento CA 95834
Email: christy_berger@dca.ca.gov
Fax: (916) 574-8625

DATED: May 23, 2006



Paul Riches, Executive Officer

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CERTIFICATION RE: AVAILABILITY OF MODIFIED TEXT

I certify that the Board of Behavioral Sciences has complied with the requirements of Section 44 of Title 1 of the California Code of Regulations and that the attached notice and modified text were mailed, and pursuant to Government Code Section 11340.85, sent by electronic communication, on May 23, 2006. The public comment period for the modified text began on May 23, 2006 and ended July 27, 2006.

DATED: *May 23, 2006*



Christy Berger, Regulations Coordinator

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**BOARD OF BEHAVIORAL SCIENCES
REVISED INITIAL STATEMENT OF REASONS**

HEARING DATE: JULY 27, 2006

**SUBJECT MATTER OF PROPOSED REGULATIONS: DELEGATION OF AUTHORITY TO
COMPEL PHYSICAL OR MENTAL
EVALUATIONS**

**SECTIONS AFFECTED: Section 1803 of Division 18 of Title 16 of the California Code of
Regulations**

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

Section 1803 delegates a number of functions related to the Board's enforcement processes to the Board's executive officer.

The proposal would amend Section 1803 to additionally allow the executive officer to order a physical or mental evaluation of a Board licensee or registrant as part of an investigation of a complaint.

Past practice at the Board and other licensing boards was to have the order signed by the Board chair. However, it was determined that such an order is an investigatory function and should not be performed by Board members who also serve as judges in the administrative adjudication process. Due process requires that the investigatory function and the adjudication function be separate and performed by different parties.

FACTUAL BASIS/NECESSITY

This proposal is reasonably necessary in order to provide the Board's executive officer with the authority to order a physical or mental evaluation of a licensee or registrant, as the executive officer does not currently have that explicit authority.

UNDERLYING DATA / MATERIALS RELIED UPON:

None.

BUSINESS IMPACT

The proposed regulations will not have a significant adverse economic impact on businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

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PART VI

NOTICE OF GENERAL PUBLIC INTEREST

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**TITLE 16 BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE OF GENERAL PUBLIC INTEREST

**NOTICE OF PUBLIC HEARING AND MODIFICATIONS TO
ORIGINALLY PROPOSED REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is continuing a rulemaking action that was originally initiated in February of 2006. This is an additional notice regarding the proposed modified text and a notice of another hearing.

Information regarding the proposed action is described in the Updated Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Department of Consumer Affairs, 1625 N. Market Blvd., El Dorado Room (Suite N-220), Sacramento, CA 95834 at 9:30 a.m. on Wednesday, October 4, 2006.

Written comments must be received by the Board at its office including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this notice not later than 5:00 p.m. on October 23, 2006, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.60 and 4990.14, Business and Professions Code, and to implement, interpret, or make specific Sections 820, 4980.07, 4990.8 and 4990.13 of the Business and Professions Code and Sections 11500-11528 of the Government Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

UPDATED INFORMATIVE DIGEST

On February 10, 2006, the Board sent a notice regarding its proposal to adopt amendments to Section 1803 of Title 16 of the California Code of Regulations (CCR). This section pertains to the delegation of certain enforcement-related functions to the Board's executive officer. A public hearing was requested and held on May 18, 2006. In response to a comment from the public, the proposed text was modified, and a 15-day notice was sent on May 23, 2006. A public hearing on the modified text was held on July 27, 2007.

This is an additional notice regarding the proposed modified text. Additionally, another hearing has been scheduled for October 4, 2006.

POLICY STATEMENT OVERVIEW

Business and Professions (B&P) Code Section 820 permits the Board to order a licensee who is unable to practice his or her profession safely due to mental or physical illness to be evaluated by one or more physicians or psychologists. B&P Code Section 4990.8 permits the Board's executive officer to exercise powers and perform duties as delegated by the Board.

Title 16, CCR Section 1803 currently permits the Board's executive officer to file accusations, issue notices of hearing, issue statements of issues, receive and file notices of defense, issue subpoenas and subpoenas duces tecum, and set and calendar cases for hearing for Marriage and Family Therapists (MFT), Licensed Clinical Social Workers (LCSW), Licensed Educational Psychologists (LEP), MFT Interns, or Associate Clinical Social Workers.

The proposal would amend Section 1803 to allow the executive officer to additionally order a mental or physical evaluation of a board licensee or registrant as part of an investigation of a complaint.

CONTACT PERSON

General or substantive inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christy Berger
Address: 1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7847
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

OR

Name: Mona Maggio
Address: 1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7830
Fax: 916-574-8625
Email: mona_maggio@bbs.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection from the Contact Person listed above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named above or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

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PART VII

STATEMENT REGARDING MAILING

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STATEMENT OF SERVICE BY MAIL

I certify that the Board of Behavioral Sciences has complied with the requirements of Government Code Section 11346.4(a)(1) through (4) and that the notice was mailed, and pursuant to Government Code Section 11340.85, sent by electronic communication on September 7, 2006.

DATED: 9/7/06


CHRISTY BERGER
Regulations Coordinator

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PART VIII

UPDATED INFORMATIVE DIGEST

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UPDATED INFORMATIVE DIGEST

The regulation text was modified by one 15-day notice which amended the text to allow the board to delegate to the executive officer the ability to order an evaluation of a licensee's physical or mental condition rather than only a psychiatric examination.

As a clarification to the Initial Statement of Reasons, this proposal would permit the executive officer to *order* an evaluation of a licensee's or registrant's physical or mental condition as part of an investigation of a complaint. The Initial Statement of Reasons stated that the proposal would permit the executive officer to *sign* such an order.

The informative digest published on September 8, 2006 by the Board of Behavioral Sciences otherwise accurately summarizes the final regulatory action taken with respect to this filing.

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PART IX

FINAL STATEMENT OF REASONS

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BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS

Hearing Dates: May 18, 2006, July 27, 2006, and October 4, 2006

Section(s) Affected: Title 16, California Code of Regulations Section 1803

Updated Information

The Initial Statement of Reasons is included in the file (Tab II). The information contained therein is updated as follows:

- As a clarification to the Initial Statement of Reasons, this proposal would permit the executive officer to order a psychiatric evaluation of a Board licensee or registrant as part of an investigation of a complaint. The Initial Statement of Reasons stated that the proposal would permit the executive officer to *sign* such an order.
- Section 1803 was modified to allow the board to delegate to the executive officer the ability to order an evaluation of a licensee's physical or mental condition rather than only a psychiatric examination.

Local Mandate

The proposed regulations do not impose any mandate on local agencies or school districts.

Business Impact

The Board has determined that this action will not have a significant adverse economic impact on business.

Consideration of Alternatives

The Board has determined that no reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations/Responses

See attached letters from the California Association of Marriage and Family Therapists in Tab XIII. Responses to these letters are also provided in Tab XIII.

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PART X

MAY 18, 2006

REGULATION HEARING (BOARD MEETING) MINUTES

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BOARD OF BEHAVIORAL SCIENCES
1625 North Market Blvd., Suite S 200, Sacramento, CA 95834
Telephone (916) 574-7830
TDD (916) 322-1700
Website Address: <http://www.bbs.ca.gov>



Board Meeting Minutes

May 18, 2006

Legislative Office Building
1020 N Street, Room 100
Sacramento, CA 95814

MEMBERS PRESENT

Gordonna DiGiorgio, Public Member
Robert Gerst, Public Member
Judy Johnson, LEP Member
Victor Law, Public Member
Peter Manoleas, Chair, LCSW Member
Karen Pines, MFT Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Spencer Walker, Legal Counsel
Kim Madsen, Staff Services Manager
Christy Berger, Legislative Analyst
Christina Kitamura, Administrative Assistant

GUEST LIST ON FILE

CALL TO ORDER AND ESTABLISHMENT OF QUORUM

The meeting was called to order at approximately 9:10 a.m. Mrs. Kitamura called the roll and a quorum was established.

I. Chairperson's Report

Mr. Manoleas introduced Charlene Zettel, Director of the Department of Consumer Affairs.

Ms. Zettel thanked the Board for their hard work. Ms. Zettel introduced Antonette Sorrick, liaison to the Boards at the department, and Rosario Marin, the Secretary of State and Consumer Services Agency. Secretary Marin briefly addressed the Board thanking them for their service.

A. Report on April 28, 2006 Conference on Diversity and Licensure

Mr. Manoleas reported that he was very impressed with the proceedings at the conference. He commended Board staff for bringing the conference together and Christy Berger for her report on California's Mental Health and Diversity.

Joe Hayes from the Public Policy Institute gave a presentation regarding California's diversity in the present and in the future. Rachel Guerrero, Chief of Multicultural Services at the Department of Mental Health, discussed their efforts in instilling cultural competency in the mental health system. Dr. Sergio Aguilar-Gaxiola from the Center for Reducing Health Disparities at the University of California, Davis, presented his research in Mexican-Americans in the Fresno area and the need for cultural competency in the mental health system. All the presenters provided suggestions for the Board's involvement in these efforts.

Those who attended the conference engaged in a brainstorming session. They addressed issues regarding education, licensure requirements, licensure examinations, workforce, and research. The Board will continue to take a look into all of the ideas. Some of these issues have already been addressed.

Board members and guests in the audience commented with positive feedback regarding the conference and guest speakers.

Mr. Gerst requested a report of all the items that were raised in the workshop and how the Board will move forward to address those items.

Mr. Riches responded that the items and inquiries raised in the workshop would be reviewed and brought to the appropriate committees for discussion.

B. Appointment of Continuing Education Appeals Committee

Mr. Riches explained the procedures for an appeal for denial or revocation of a continuing education (CE) provider. Title 16, California Code of Regulations, Section 1887.8 require an informal appeal with the Board's designee. If that appeal does not satisfy the appellant, then the appeal is heard by a committee or the Board. The regulation specifies a three-member committee consisting of one public member and two professional members.

Mr. Manoleas appointed Robert Gerst, Dr. Ian Russ, and Joan Walmsley to the Continuing Education Appeals Committee. The Appeals Committee meetings will be held in conjunction with the regularly scheduled Board meetings.

C. Appointment of Committee on Marriage and Family Therapist Education

Laws governing curricular requirements for licensure as a marriage and family therapist have not been subject to a thorough review in many years. Mr. Manoleas formed a committee to conduct a review of these requirements and recommend changes in the statutes if necessary.

Mr. Manoleas appointed Dr. Ian Russ, Karen Pines, and Gordonna Di Giorgio to the Marriage and Family Therapist Education Committee. Dr. Russ will chair the committee.

II. Executive Officer's Report

A. Personnel Update

There were two departures since the last Board meeting. Sal Reyes, Business Services Analyst, and Janene Mayberry, clinical social work evaluator, have accepted positions at the Board of Barbering and Cosmetology. There have been four new hires since their departures. Dominique (Nikki) Cotto was hired as a new Student Assistant. Kari O'Connor, a student assistant with BBS, was promoted to Office Technician in the cashier unit. Jessica Upadhye accepted the position as clinical social work evaluator and will begin with the Board on June 5th. Michelle Marine accepted the position as Business Services Analyst.

Mr. Manoleas inquired about who will be performing the CE audits. Mr. Riches introduced Cheree Lasley from the enforcement unit, who will be conducting the CE audits.

There are no further vacancies at the Board.

B. Designation of Executive Officer to Hear CE Provider Appeals

Mr. Riches explained that the Board's regulations specify the procedures for appealing the denial or revocation of a continuing education provider approval. The first route of appeal is for a hearing before the Board's "designee." The Board had not, to date, designated an individual to conduct these appeals. Since the Board has recently issued a number of denials of applications for continuing education provider approvals, it is recommended that the Board formally designate the Executive Officer to hear appeals.

Ms. Walmsley questioned how CE providers would be evaluated. This question will be addressed at the Consumer Protection Committee meeting.

ROBERT GERST MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO DESIGNATE THE EXECUTIVE OFFICER TO HEAR CE PROVIDER APPEALS.

C. Miscellaneous Matters

Some of the routine reports, such as budget updates, the Enforcement statistics, licensing statistics, are broken down into committee reports. The committees are overseeing those functions through their operations. Budget updates are included in the Budget Committee report, and the Enforcement statistics are included in the Consumer Protection Committee report.

D. Introduction of and Comments by Warren Hayes, MFT, Chief of MHSA Workforce and Education Training

Mr. Hayes is new to the Department of Mental Health (DMH) for the implementation of the Mental Health Services Act (MHSA) workforce education and training component. Mr. Hayes explained his action plan for reviewing the education and training section in the MHSA statutes. The statutes are very descriptive regarding how to spend the MHSA funds for workforce issues. DMH created a statewide advisory committee to assist in

responding to the statutory requirements and to develop and write a comprehensive 5-year education and training plan. The workforce identified several components, one that pertains to licensing and certification. Mr. Hayes encountered a lot of discussion about how licensing and certification issues can impact workforce issues in public mental health. The committee would like to focus on ideas for prudent use of the funds to solve public mental health workforce shortages, as well as honoring the intent of the MHSA.

Dr. Russ asked about the what type of training issues Mr. Hayes was addressing, for example, post-licensing training, changing curricula in the education program, training of unlicensed people who may serve as peer counselors, alcohol rehabilitation counselors, or para-professionals.

Mr. Hayes responded that he is addressing re-training existing workforce and all of those types of training cited by Dr. Russ. Other types of training include short-term training at the high school level; peer support; community partners and psychiatric residency programs.

Mr. Hayes stated that that they are still in the early development stage. Mr. Hayes indicated that he is keeping a wide-angled view of as much inclusion with as many partners as possible including the educational institutions. Mr. Hayes explained that the Board is a key player in the advisory committee's goals.

Mr. Manoleas suggested that the Board be represented in a formal seat on the advisory committee. Mr. Hayes was pleased with the suggestion.

Mr. Hayes stated that the DMH is waiting for the announcement of the new CEA for Prevention and Early Intervention. He offered to invite the new CEA to the next Board meeting and to meet the Board members.

III. Approval of February 16, 2006 Board Meeting Minutes

JOAN WALMSLEY MOVED, JUDY JOHNSON SECONDED, AND THE BOARD CONCURRED TO APPROVE THE BOARD MEETING MINUTES OF FEBRUARY 16, 2006.

IV. Approval of January 27, 2006 Board Meeting Minutes

IAN RUSS MOVED, ROBERT GERST SECONDED, AND THE BOARD CONCURRED TO APPROVE THE BOARD MEETING MINUTES OF JANUARY 27, 2006.

V. Report of the Consumer Protection Committee

A. Enforcement Statistics

Mr. Gerst requested a tracking of funds collected on citations and a breakdown by category in future statistics.

Dr. Russ referred to Recovery Costs statistics. Dr. Russ asked why less money was collected than what was ordered in most years with the exception of February 2003 and if costs are generally collected.

Mr. Riches responded that some are not able to pay their full amount the cost recovery up front; they pay it off over time. Generally, the costs are collected with exception of couple of cases where costs are ordered. For a revocation or surrender, typically the costs are ordered to be paid upon reinstatement of the application, which is the largest area where costs are not collected. The Franchise Tax Board (FTB) has an intercept program that the Board occasionally uses in an attempt to capture uncollected costs.

Dr. Russ referred to the Overview of Enforcement Activity, stating that the numbers are consistent over time except on the citations issued during the last year. There was a large increase on citations issued, however, there is a decrease on complaints received.

Mr. Riches responded that staff is now available to do the CE audits, which generates the numbers of the citations. The numbers of complaints are based on the first three quarters of the year. That number indicates that the total of complaints received will be significantly higher this year because we saw nine months of data in that number.

Mr. Gerst referred to the Breakdown of Enforcement Complaint Closures by Type, which reported 288 cases closed upon the issuance of a cease and desist, or warning letter. Mr. Gerst requested a break down illustrating why these people received cease and desist notices. Ms. Maggio responded that the information would be included at the next Consumer Protection Committee meeting.

Mr. Riches recognized the Enforcement Program for the hard work they do everyday. He stated that the enforcement numbers are significantly higher than they have been in the past. The Enforcement Program is facing work that is very challenging everyday.

B. Recommendation to Sponsor Legislation to Add Violations of Health and Safety Code Section 123110 to the Definition of Unprofessional Conduct

Ms. Maggio reported that the Enforcement unit receives a number of complaints regarding licensees who decline to provide patient records when requested by the patient. Although the Enforcement Analysts try to mediate the situation, they do not have any authority in which to require licensees to provide the treatment records to the clients, or to other individuals that the client requests the records to be sent to, even though the client signed a release. Draft language was brought to the committee to update the unprofessional conduct sections Business and Profession Code (BPC) Sections 4982 (MFT), 4986.70 (LEP) and 4992.3 (LCSW) to include a violation of Health and Safety Code (HSC) Section 123110, which would require health care providers to provide patient records upon request.

Ms. Walmsey expressed concerns regarding turning over records to the patient. She explained that the laws are extremely rigid and very specific about documentation. If patients request their records, and the records are detailed, as the law requires, it can be potentially detrimental to the patient.

Mr. Gerst suggested that the existing statute be clarified by adding language that would incorporate both issues:

- That the patient has right to obtain their records
- Provide a means in which a professional can withhold records or limit the amount of material that is provided to the patient, if justified.

Mr. Riches explained that there is adequate protection for patients in the law and there is the ability for the therapists to provide summaries in situations where the record might be harmful. Mr. Riches further explained that we do not want to re-open those issues; the purpose is to be sure that the Board has the ability to enforce the existing law. The statute regarding the rules surrounding the release of patient records does not need to be clarified. The problem is compliance with the law.

Richard Leslie, representative for California Association of Marriage and Family Therapists (CAMFT), stated several points:

- A patient has a right to a copy of their records.
- The therapist has right to provide a summary of the records, if the therapist chooses to do so.
- The therapist has a right to deny access completely if they feel that it would be harmful to the patient to see a copy of the records, in which case they can provide the records to another health care professional.

Mr. Leslie cited in HSC Section 123110(i) which states, “Any health care provider who willfully violates this chapter is guilty of unprofessional conduct.” He explained that the Board has the authority to take disciplinary action against a licensee for unprofessional conduct for a violation of the chapter – not the section.

Mr. Leslie stated that if the Board wants to list subdivision I of HCS Section 123110 in BPC Section 4982, there would be no objection because it is already unprofessional conduct. However, if the Board does that, Mr. Leslie suggests that there are other sections in the codes that need to be addressed, such as the telemedicine statute. There are three grounds for unprofessional conduct in the regulations that should also be listed in BPC Section 4982. The only reason to do this is to list in one place in the unprofessional conduct section and other sections of law that declare certain acts as unprofessional conduct and to get rid of duplicative regulations.

Ms. Schieldge suggested that it is specifically identified as grounds for discipline in the unprofessional conduct statute. She suggested that staff do more research on this and look at other provisions of law that may be affected. The authority needs to be clarified.

Mr. Manoleas indicated that staff would need to redraft the proposal. He asked what issues should be considered in the redraft.

Ms. Schieldge responded with two options:

- Take Mr. Leslie’s idea by adding the specific statutory subdivision in cross-reference to the BPC.
- Take a look at HSC Section 123110 and either use the same language or other language in the BPC.

Mr. Riches recommended taking the existing body of the law and reference it – not to rewrite it.

Dr. Russ indicated that unprofessional conduct should be in one place. Mr. Gerst agreed.

Robert Gerst moved and Judy Johnson seconded to sponsor legislation to add a violation of HSC Section 123110 to BPC Sections 4982 (MFT), 4986.70 (LEP) and 4992.3 (LCSW). However, Mr. Gerst withdrew his motion so that staff could redraft and bring it back to the next meeting.

C. Report on the April 17, 2006 Committee Meeting

Howard Stein, Committee Chairperson, reported that the Consumer Protection Committee met on April 17, 2006. Addressing the following action items, the committee:

- Conducted a review of progress on achieving strategic objectives under Goal #3.
- Discussed the definition of what constitutes online education.
- Received an update on the Supervision Survey for Marriage and Family Therapists (MFT), Interns, and Associate Clinical Social Workers (ASW).
- Discussed allowing supervision via video conferencing for MFT Interns and ASW registrants.
- Reviewed the scope of unprofessional conduct statutes.
- Reviewed the Board of Behavioral Sciences Enforcement Program.
- Reviewed the enforcement authority available to the Board for urgent/emergent cases.

VI. Report of the Budget and Efficiency Committee

A. Budget Update

Mr. Riches reported that the Board is operating well within its budget. There will be more information on the upcoming year's budget at the next meeting.

B. Licensing Statistics

Mr. Riches reported that the licensing program exceeded the strategic plan objective to reduce application processing time by 33%. Currently, an application without any deficiencies can be processed within 10-12 days. Deficient applications are the biggest issue. Staff is working on lowering those numbers.

Mr. Law proposed to bring back the discussion to grant CE credits to people who attend Board meetings.

Ms. Walmsley and Ms. Johnson commented on the benefits for those who attend Board meetings. This issue will be addressed at the next Board meeting.

C. Recommendation to Initiate Rulemaking for a Temporary Reduction in Fees

Mr. Riches reported that there is enough reserve in its fund to sustain operation for almost a year. In addition, there is an outstanding General Fund loan made in 2002-03 fiscal year for \$6 million. With those two together, the Board has a considerable reserve

in the fund. However, the General Fund loan is not considered as part of that on-going reserve. There is a statute that requires any Board when they reach 24 months of operating costs reserves, to reduce their fees. The Department of Finance recommends 3 to 6 months as an adequate ongoing reserve.

The majority of the Board's revenue is derived from renewal fees. Rather than waiting for the current fund to reach 24 months of operational reserve, staff developed a temporary fee reduction proposal. The fee reduction program would reduce the fund balance by approximately \$3.6 million.

D. Recommendation to Sponsor Legislation for a Temporary Increase in the License Renewal Surcharge for the Mental Health Service Providers Education Fund

Mr. Riches reported on the suggestion to offset the proposed reduced licensing fees by increasing the surcharge assessed to license renewals for the Licensed Mental Health Service Providers Education Program during the period of fee reduction. The program will be available to those people who are licensed as, or pursuing licensure as MFTs, LCSWs, or LEPs to pay down outstanding school loans if they agree to serve in an underserved area. Currently, the Board gives the program approximately \$200,000 acquired through license renewal surcharges. This could be an opportunity to help with some additional funding to that program.

Mr. Riches stated that the regulations needed to start handing out grants are not in place yet. There is revenue flowing into the fund and that we are working with the Health Professions Education Foundation under the Office of Statewide Health Planning and Development.

Dr. Russ stated that there are many universities across the United States that have trust funds and loan forgiveness programs for people who go into public service. There are other places that have the stake in spreading out mental health sources in this state.

Mr. Riches explained that the renewal reduction would be set by Board regulation. The Legislature specifies the range of our fees, and by regulation the Board sets the fee. There is a statute which states that a \$10 surcharge shall be directed to this fund. To do an increase in the surcharge will require legislation, and the fee reduction is by regulatory activity.

Mr. Manoleas stated that we would have to propose a fee increase by the same amount that the surcharge will put into the fund. The surcharge is increased but the bottom line of the renewal fee is not increased. Mr. Riches indicated that it will require two pieces of legislation. The Board will initiate the rule making and work out the timing so that both pieces of legislation will travel together.

Mr. Riches explained that in 2 years, the surcharge would decrease, returning back to \$10 and the renewal fee would increase, returning to normal.

Janlee Wong from the National Association of Social Workers (NASW) stated that California social workers are excluded from the national program for loan repayment because the Board has a "California-only" exam. The Board decided years ago to retain the national exam that is utilized by every other state. NASW would like the Board to change the policy.

Mr. Manoleas indicated that this could be brought to the Policy and Advocacy Committee.

There will be more information on this discussion at the next Board meeting.

E. Report on the April 17, 2006 Committee Meeting

Victor Law, Committee Chairperson, reported that the Budget and Efficiency Committee met on April 17, 2006 in Los Angeles. The action item on the agenda was the recommendation that the board direct staff to develop a rulemaking proposal to temporarily reduce fees to address the growing reserve in the Behavioral Sciences Fund. The fee reduction should occur in tandem with board-sponsored legislation to temporarily increase the license renewal surcharge to redirect 50% of the fee reduction revenue to the Licensed Mental Health Services Providers Education Program.

Addressing other committee activities, the committee:

- Received an update on the Board's budget.
- Received a report on current licensing statistics.
- Conducted a review of progress on achieving the strategic objectives under Goals 2, 5, and 6.
- Was informed that Board staff will be submitting a budget change proposal for the 07-08 fiscal year to add two enforcement analysts.
- Discussed a proposal to grant continuing education credits for attendance at board meetings.

VII. Report of the Communications Committee

A. Recommendation to Add Objective 1.7 to the Strategic Plan Regarding Board Outreach

The Committee made a recommendation to the Board to adopt a new Strategic Plan Objective 1.7 regarding Student Outreach. Sean O'Connor, Outreach Coordinator, visits qualifying degree-granting colleges or universities and presents information to students and faculty on the licensure process. The feedback has been very positive. The goals for student outreach would include 25 student outreach events a year by June 30, 2010. The team members would be Sean O'Connor and Kim Madsen.

Ms. Maggio explained the details of the presentation including the step-by-step process of what is required for licensure as an MFT or LCSW.

Ms. Pines, Ms. Walmsley, Ms. Maggio, and Kim Madsen, all provided examples of the positive feedback received in support of the program.

JOAN WALMSLEY MOVED, DR. IAN RUSS SECONDED, AND THE BOARD CONCURRED TO ADD OBJECTIVE 1.7 STUDENT OUTREACH TO THE STRATEGIC PLAN.

B. Report on the March 29, 2006 Committee Meeting

Karen Pines, Committee Chairperson, reported that the committee conducted a review of the progress on achieving the strategic objectives under Goal #1 – Communicate Effectively With the Public and Mental Health Professionals.

Objective 1.1 -- Provide Six Educational Opportunities for Stakeholders and Staff on BBS Budget by July 30, 2006.

Ms. Pines reported that Budget Analyst Paula Gershon presented a budget overview to the Board at the November 2005 Board meeting. Ms. Gershon prepared an article entitled *Understanding the Board's Budget* for publication in the Spring 2006 newsletter. Additionally, a presentation tailored to the public is included during outreach presentations, such as student and educator forums.

Objective 1.2 – Distribute a Handbook Outlining Licensing Requirements by December 31, 2006 to 100% of California Schools Ordering Qualifying Degrees.

Ms. Pines reported that staff is currently reviewing the formerly used “Frequently Asked Questions” information, which will serve as a basis for the student handbook.

Ms. Maggio explained that the handbook would meet the needs of examination candidates. The handbook includes answers to the most commonly asked questions from candidates. At the March 29, 2006 committee meeting, the brochure was reviewed for content and suggestions for improvement were made. The brochure is currently going through legal counsel review. The brochure would be enclosed with the notice mailed to candidates who are eligible to take the examination.

Objective 1.3 – Distribute Consumer Publication Regarding Professions Licensed by the Board by June 30, 2007.

Ms. Pines reported that staff has begun the steps to contract with a public relations (PR) firm to assist in the development of brochures, handouts, PowerPoint presentations as well as identify the Board's primary constituency groups and their needs.

Mr. Riches reported that staff is approaching the end of the contract process. Five firms were contacted and two proposals were received. Staff anticipates that the approval paperwork will be finalized and a PR firm will be secured by July. The services provided by the contractor will be to recommend changes regarding communication and to formulate a plan. The contractor will assist in areas of graphic design and layout, identifying audiences, how to reach those audiences, press releases, or billboards. The contract requires that the contractor attend a couple committee meetings and Board meetings to discuss their process and their findings.

Objective 1.4 – Achieve 60% on Customer Service Satisfaction Surveys by June 30, 2008.

Ms. Pines reported that the committee reviewed each survey and provided suggested edits. The surveys include: the general survey, the licensing survey, the enforcement survey, the outreach survey, and the website survey. The edits have been made and staff is researching the costs associated with printing the surveys and postage.

Mr. Gerst referred to the surveys where it asked to explain a rating of “unacceptable in the comment section.” He suggested changing the statement to read, “If you indicated other than ‘Excellent’ please explain in the comment section.”

Mr. Riches noted that the suggestion would go back to the committee for further discussion.

Objective 1.5 – Participate Four Time Each Year in Mental Health Public Outreach Events Through June 30, 2010.

Ms. Pines reported that on April 21-22, 2006 Mr. Riches, Board Members and staff attended the NASW Conference in Los Angeles. On May 4-7, 2006 Board Members and staff attended the CAMFT Annual Conference in Palm Springs.

Objective 1.6 – Review and Revise Website Content Four Times Per Year

Ms. Pines reported that staff found that the necessary updates have been forwarded to the Webmaster on a regular basis rather than waiting until the quarterly time frame to have revisions made to the web site. Ms. Pines recommended changing the language because it is a continual process.

Mr. Leslie suggested that Board policies be placed on the web site.

Ms. Pines noted that Mr. Leslie’s recommendation would go back to the committee for further discussion.

VIII. Regulation Hearing for Proposed Changes to 16CCR1803 Regarding Delegation to the Executive Officer

On Thursday May 18, 2006 at 2:10 p.m. in Sacramento, California, Mr. Manoleas went on the record and gave an introduction explaining the Board’s intent to conduct a public hearing of proposed regulations. Mr. Manoleas stated that the regulation proposal was filed with the Office of Administrative Law and has been duly noticed; and copies of the proposed regulations have been sent to interested parties. The regulation proposal would amend Title 16, California Code of Regulations Section 1803, which currently delegates a number of enforcement functions to the Executive Officer. This proposal would delegate the ability to issue an order compelling an evaluation of a licensee’s physical or mental condition as part of a complaint investigation. Mr. Manoleas opened the floor for anyone wishing to testify.

Richard Leslie of CAMFT, objected to the lack of proper notice of the hearing and stated that the notice needs to indicate a date and time, per government code. He testified that it

is the Board, not the Executive Officer, who should decide to issue orders for a psychiatric or physical examination. He stated that this function not be delegated to the Executive Officer in order to ensure that the Executive Officer is not exceeding his authority. The evidence should be brought to the Board to determine if the Board should order an exam. Mr. Leslie stated that it is a violation of due process to delegate the power to the Board's Executive Officer.

Geri Esposito, Executive Director of California Society for Clinical Social Work (CSCSW), concurred with Mr. Leslie. Ms. Esposito requested that the Board to reconsider delegating its authority and power to the Executive Officer.

No further testimonies were given. Mr. Manoleas closed the public comment session and proceeded with Board discussion.

Ms. Schieldge explained the history behind this proposal. It came to the Executive Officer's attention last year. The Board had delegated to the Chairperson the authority to compel a psychiatric or physical examination. When the Chairperson orders the exam, the Chairperson recuses himself from the decision-making process in order to ensure due process rights are not violated. Voting decision makers are lost when the Chairperson recuses himself. At the time, the Board was having quorum issues due to vacancies. The Chairperson asked to be removed from signing that order because the Chairperson knew the person who was going to potentially be evaluated. The authority was then delegated to another member of the Board. If that person recused himself, then there would be less people to vote if it came back to the Board for hearing.

Ms. Schieldge addressed the delegation issue stating that the Board can delegate any of its functions to the Executive Officer. She cited BPC Section 4990.13, which states that the enforcement of the chapter is vested with both the Board and the Executive Officer. Ms. Schieldge also cited BPC Section 4990.8, which states that the Executive Officer shall exercise the powers and perform the duties delegated by the Board.

Ms. Schieldge referred to the Administrative Procedures Act (APA). Government Code Section 11500 specifically refers to Article 4.5 of the APA. The APA specifically requires under 11425.30 of the Government Code, that there be a separation of function within each agency. That separation of function guarantees that there is no bias to achieve a particular end result. For this reason, the legal office recommended that whoever signs the order, recuses himself from the case.

Ms. Schieldge explained that the Board is considering this delegation for two reasons: (1) to provide more assurances of the bias potential being removed, (2) to address the concern about establishing a quorum.

Discussion was closed at the end of the Board discussion.

Mr. Leslie noted that the intent of BPC Sections 820-828 is for the Board to have the authority do both functions. He expressed that there is no need for anybody to recuse himself or herself, and that there is no need for delegation.

Mr. Riches mentioned a proposal to amend the proposed language for Section 1803 of Division 18 of Title 16 of the California Code of Regulations in response to comments from CAMFT. The proposal is to modify language to reflect the change from "issue orders

compelling psychiatric examination in accordance with BPC Section 820” to “issue orders compelling *an evaluation of a licensee’s physical or mental condition* in accordance with BPC Section 820.”

ROBERT GERST MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO AMEND THE PROPOSED REGULATION AS SUGGESTED AND DIRECT STAFF TO MAKE THE MODIFIED TEXT AVAILABLE TO THE PUBLIC FOR AT LEAST 15 DAYS, AND SET IT FOR ANOTHER PUBLIC HEARING FOR COMMENT ON THE TEXT.

Victor Law excused himself from the remainder of the meeting at approximately 3:16 p.m.

IX. Report of the Policy and Advocacy Committee

A. Recommendation to Amend and Adopt the Board’s Proposed Rulemaking Related to Title 16 CCR Section 1803

This item was discussed under Agenda Item XIII.

B. Review of Pending Legislation with Committee Recommendations

AB 525 Child Abuse Reporting

Christy Berger, Legislative Analyst, reported that AB 525 died.

AB 2283 Physicians and Surgeons: Ethnicity and Language Proficiency

Ms. Berger explained that physicians are asked to report their ethnic background and language proficiency to the Medical Board of California (MBC). This bill would require the MBC to compile information and report it on the MBC’s web site so that the public can access the information when choosing a physician who speaks their language. The Committee recommended that the Board support AB 2283.

ROBERT GERST MOVED, KAREN PINES SECONDED AND THE BOARD CONCURRED TO TAKE A SUPPORT POSITION ON ASSEMBLY BILL 2283.

AB 3013 Medical Information: Disclosures

Ms. Berger reported that this bill would strengthen and clarify laws regarding confidentiality by conforming California laws to federal law (HIPAA). This bill is intended to prevent psychotherapists from disclosing general health information regarding a patient. The Committee recommended that the Board support AB 3013.

IAN RUSS MOVED, KAREN PINES SECONDED, AND THE BOARD CONCURRED TO TAKE A SUPPORT POSITION ON ASSEMBLY BILL 3013.

AB 2428 Public Meetings

Ms. Berger reported that AB 2428 died in the Assembly.

SB 1228 Covenant Marriage

Ms. Berger reported that SB 1228 died in the Senate.

C. Recommendation to Sponsor Clean-up Legislation Regarding the Licensed Mental Health Services Provider Education Program

Mr. Riches reported that the Board was working with the Health Professions Education Foundation (HPEF) on getting the educational loan program running. In the course of working with the HPEF to put regulations together, it was identified that ASWs and MFT interns would not be eligible for that program. They would only be eligible after they become licensed which is approximately 3-4 years after they graduate. However most loan repayments begin 6 months after they graduate. The people that are coming out of school and becoming registered need assistance the most. The law precludes them from receiving the award until they are licensed. Mr. Riches recommended sponsoring legislation that would also allow registrants to receive the award.

KAREN PINES MOVED, IAN RUSS SECONDED, AND THE BOARD CONCURRED TO SPONSOR CLEAN-UP LEGISLATION REGARDING THE MENTAL HEALTH SERVICES PROVIDER EDUCATION PROGRAM.

D. Recommendation to Revise BBS Public Disclosure Policy E-04-2

Mr. Riches reported that the Governor signed Executive Order S-03-06, which requires all state agencies to take a number of actions related to agency compliance with the California Public Records Act (PRA). Among the required actions is for each agency to review and revise as necessary written guidelines for accessibility of public records. This order appears to have been triggered by an audit of agency compliance with the PRA by Californians Aware. The audit found substantial non-compliance by many state agencies, including the Department of Consumer Affairs.

Mr. Riches reported that the policies were reviewed, and two policies relating to the disclosure of public information were found to require revision. The policies do not mention reporting of settlements and arbitrations. There is a law that requires a malpractice settlement against the licensee in excess of \$30,000 to be reported to the Board. Another statute requires the settlement or arbitration awards relating to malpractice in excess of \$10,000 be reported to the Board. Under the PRA, the Board is required to disclose that information. The committee recommends that the policy be amended to be consistent with the requirements of the PRA as well as eliminate restrictions of fines.

Mr. Leslie suggested that #3 on Policy E-04-2 should read "an alleged violation" rather than "a violation" because paying the fine is not an admission of wrongdoing. Therefore, it is not a disciplinary action and is not considered a violation.

Ms. Schieldge responded that if the fine is paid, it is not considered disciplinary action. However, it is a final determination that a violation occurred if it is not appealed. She

suggested that the language could be changed to read "Final determination for a citation and fine, or citation and order of abatement issued by the Board."

Mr. Leslie referred to Policy E-04-02. Under Administrative Citations Issued on page two, he stated that it should read, "A citation and/or fine has been issued for *an alleged* violation of the law." He also referred to the Administrative Disciplinary Actions Disclaimer, and stated that the word "guilty" should not be used. He suggested that it should read, "Although an Accusation has been filed, the subject has not had a hearing or *not been found to have violated any law or regulation.*" Mr. Leslie also referred to paragraph two on the same page, and suggested replacing the term "release" with "written authorization."

Ms. Johnson recommended using the term "authorization."

Mr. Leslie expressed concerns about citations disclosed on the web site. He asserted that these are minor actions, there is no finding or admission of wrongdoing, and there is no violation of law.

Mr. Gerst stated that there is a misconception to say that the citation is minor and it is not insubstantial. It is an important tool in exercising the Board's function of protecting the public. Mr. Gerst explained that the Legislature adopted laws in order to protect the public that allows agencies to issue citations, and still protect the licensee. If the licensee feels that the violation is improper, an informal appeal can be requested.

Mr. Riches explained that according to the PRA, the Board is required to disclose that information upon request. He further explained that BPC Section 27 requires specified state agencies to put enforcement related information on the web site. The Board of Behavioral Sciences is one of those specified agencies.

Ms. Schieldge explained that everything that is owned, prepared, used or retained is a public record. This is a publicly disclosable record, not a category that is exempt from disclosure.

Mr. Leslie expressed his opinion that this is an underground regulation and should not be a policy. He encouraged the Board not to have this form in a policy, but in regulation. Mr. Leslie stated that the public policies are not found on the Board's web site.

Ms. Schieldge further explained that the Department of Consumer Affairs (DCA) is required by law to promulgate departmental guidelines with respect to access to public records as stated in Government Code Section 6253.4(a), and that such guidelines authorize Boards to specify the manner in which a record may be maintained.

Ms. Schieldge suggested that the subject should be clearer with respect to the license verification status and the recommendation of putting PRA requests in writing. The second paragraph should read, "Should the caller request *this information*, staff should request that they submit the request in writing."

ROBERT GERST MOVED, JUDY JOHNSON SECONDED, AND THE BOARD CONCURRED TO ACCEPT AMENDMENTS TO THE BBS PUBLIC DISCLOSURE POLICY E-04-2.

Ms. Schieldge referred to the last sentence of Policy E-03-1, item 1. She recommended changing the language to read, "...the Board may issue citations, fines, and orders of abatement *in lieu of an accusation*."

Ms. Schieldge referred to the last sentence on Policy E-03-1. She recommended striking or removing the references to Section 494 as inaccurate. She also recommended changing the language to read, "*These actions and decisions* are matters of public record and will be disclosed."

KAREN PINES MOVED, JOAN WALMSLEY SECONDED, AND THE BOARD CONCURRED TO ACCEPT AMENDMENTS TO REVISE BBS PUBLIC DISCLOSURE POLICY E-03-1.

D. Recommendation to Amend Title 16 CCR Section 1833.1 and Title 16 CCR Section 1870 Regarding the Qualifications of Supervisors

Dr. Russ reported that there are a number of agency leaders not seeing clients on a regular basis, but they are providing supervision. They are excluded from providing clinical supervision because they did not have enough client contact hours. The committee recommended revising the qualifications for supervisors because they were actively involved.

Mr. Riches explained that there are two regulations. One regulation applies to supervision of MFT interns. The other regulation applies to supervision of ASWs. The 5-hour per week client contact requirement only applies to the supervision of MFT interns. The proposal eliminates the 5-hour requirement for the MFT interns, making both regulations consistent. The other is to accept supervision time as a qualification in lieu of the direct psychotherapy.

Ms. Walmsley expressed her concerns about a licensee becoming a supervisor after two years of licensure and taking the course, and doing no additional clinical work except for supervising. She stated that many agencies are going to hire new licensees as supervisors who will forego their clinical work, because the agencies need supervisors.

Janlee Wong from NASW stated that this will not prevent someone with two years of clinical practice from supervising. Agencies can hire anyone they want. There is a shortage of good work experience sites for ASWs. Restrictions could possibly lessen the number of places where people can earn their hours.

Olivia Loewy, American Association of Marriage and Family Therapy (AAMFT) California Division, stated that many supervisors hire supervisees who can provide treatment to a lot of people who need services. Cutting down on that is cutting down on the amount of people served.

Heather Halperin, LCSW from the University of Southern California, expressed her concerns regarding supervisors who are not in direct contact with patients in a field where treatment is always changing and is not stagnant. Ms. Halperin stated that those supervisors may not be the best qualified to provide supervision.

Dr. Russ and Ms. Pines both agreed with Ms. Walmsley's concerns and suggested taking this back to committee for further discussion.

E. Recommendation to Sponsor Legislation Regarding Qualifications of Out-of-State Applicants for Clinical Social Work Licensure

Dr. Russ reported that the committee recommended to the Board to sponsor legislation that would credit out-of-state applicants for clinical social worker licensure for prior licensed practice time.

Ms. Berger explained that current law requires that an individual who is licensed as a clinical social worker in another state must meet education and supervised experience qualifications, regardless of how long he or she has been licensed. An applicant whose supervised experience is more than six years old, or who has not earned 3200 hours is required to gain those hours. The statute would permit out-of-state applicants to count their hours during the time that they have been licensed in lieu of supervised experience. The person must have been licensed for a minimum of four years in another state, whose license is valid, active and without disciplinary action. Persons licensed for fewer than 4 years would also be able to count some hours of licensed practice.

Geri Esposito expressed her support for the proposed changes. She suggested to the Board to get organizational support from the county mental health directors and county welfare directors before this goes through the Legislature.

JOAN WALMSLEY MOVED, JUDY JOHNSON SECONDED AND THE BOARD CONCURRED TO SPONSOR LEGISLATION REGARDING QUALIFICATIONS OF OUT-OF-STATE APPLICANTS FOR CLINICAL SOCIAL WORK LICENSURE.

G. Report on the April 19, 2006 Committee Meeting

Dr. Ian Russ, Committee Chairperson, reported that the Policy and Advocacy Committee met on April 19, 2006 in Sacramento. The committee conducted a review on Strategic Plan Objective 4.

Objective 4.1 – Participate in 15 public policy forums throughout the state addressing access to mental health services by June 30, 2010.

On March 23-24, 2006 Mr. Riches attended the meeting of the Mental Health Services Oversight and Accountability Commission (commission) in Sacramento. The commission is responsible for oversight of the Mental Health Services Act (Proposition 63). The meeting included organizational matters for the commission and presentations on prevention and early intervention in mental illness, which is a major focus of Proposition 63.

Objective 4.2 – Develop 4 proposals related to behavioral science

The Board sponsored a conference on diversity issues on professional licensing that was held on April 28th in Sacramento. The conference featured state and national experts in demography and cultural competence in mental health care as well as working sessions designed to provide feedback and suggestions for the Board's consideration.

Objective 4.3 – Advocate for 5 laws that expand access to mental health services by June 30, 2010.

Dr. Russ reported that the committee has not addressed this objective yet.

X. Public Comment for Items Not on the Agenda

Olivia Loewy, Executive Director of AAMFT, requested that the Board initiate an investigation related to reciprocity of out-of-state marriage and family therapist licenses.

Ms. Loewy recognized the efforts made to review the statutes and regulations for out-of-state applicants for clinical social work licensure. She indicated that the California public mental health system is facing severe shortages. The current statutes and regulations discourage experienced marriage and family therapists from practicing in California.

Ms. Loewy provided four letters from out-of-state marriage and family therapist applicants discussing their concerns and experiences regarding the California licensure process.

Mr. Manoleas noted that this item would be on the agenda for the Policy and Advocacy Committee meeting on June 28, 2006 in the Los Angeles area.

Ms. Loewy closed by commending the Policy and Advocacy Committee.

Heather Halperin, LCSW from University of Southern California, also added positive feedback for the Board.

The meeting adjourned at approximately 4:53 p.m.

Board Meeting Minutes

May 19, 2006

Legislative Office Building
1020 N Street, Room 100
Sacramento, CA 95814

MEMBERS PRESENT

Peter Manoleas, Chair, LCSW Member
Gordonna DiGiorgio, Public Member
Robert Gerst, Public Member
Judy Johnson, LEP Member
Karen Pines, MFT Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

Victor Law, Public Member

STAFF PRESENT

Paul Riches, Executive Officer
Kristy Schleidge, Legal Counsel
Spencer Walker, Legal Counsel
Christina Kitamura, Administrative Assistant

GUEST LIST ON FILE

FULL BOARD OPEN SESSION

The meeting was called to order at 9:08 a.m. Mrs. Kitamura called the roll and a quorum was established.

XI. Petition for Reinstatement

A. Daniel Richard Kinder MFC 9337 & LEP 0785

The Board heard a petition for reinstatement requested by Daniel Richard Kinder. The hearing was presided over by Administrative Law Judge, Stephen Smith.

The Board met in closed session to deliberate its decision in this matter pursuant to Government Code Section 11126(c)(3).

FULL BOARD CLOSED SESSION

XII. Pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions

The meeting was adjourned at approximately 11:35 a.m.

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PART XI

JULY 27, 2006

REGULATION HEARING (BOARD MEETING) MINUTES

REFER TO AGENDA ITEM III FOR COPY OF MINUTES

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PART XII

**OCTOBER 4, 2006
REGULATION HEARING TRANSCRIPT**

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REGULATION HEARING TRANSCRIPTION

Title 16, California Code of Regulations Section 1806
October 4, 2006
Sacramento, CA

“The purpose of this public hearing is to consider proposed changes to Title 16, California Code of Regulations Section 1803. Today is Wednesday, October 4, 2006, the time is 9:33 a.m., and this hearing is being conducted in Sacramento, California.

Board staff present for this hearing are: Christy Berger, Stephen Sodergren, and George Ritter.

The hearing will now commence in order to take oral testimony or documentary evidence from any person interested in this regulation for the record, and is being recorded. All oral testimony and documentary evidence will be considered by the Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopts the proposed changes to these regulations or recommends changes which may result from this hearing.

This regulation proposal would amend Title 16, California Code of Regulations Section 1803, which currently delegates a number of enforcement functions to the executive officer. This proposal would additionally delegate the ability to issue an order compelling an evaluation of a licensee's physical or mental condition as part of a complaint investigation.

Any written comments received will be made a part of the permanent record. Does anyone in the audience wish to testify?”

There were no attendees at the hearing and therefore no comments were received at the hearing.

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PART XIII

WRITTEN COMMENTS

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We're here for *You!*

*CAMFT is
dedicated to the
advancement and
understanding of
the profession of
marriage and
family therapy as
both an art
and a science, to
maintaining high
standards of
professional
ethics and
qualifications,
and to expanding
the recognition
and utilization of
the profession.*

California Association
of Marriage and
Family Therapists

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San Diego, CA 92111
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F: (858) 292-2666
www.camft.org

BOARD OF
BEHAVIORAL SCIENCES

2006 SEP 14 PM 12:00

September 12, 2006

Christy Berger
Mona Maggio
Board of Behavioral Sciences
1625 North Market Blvd., Suite S200
Sacramento, CA 95834

Re: Proposed Amendments to Section 1803 of Division 18 of Title 16 of the
California Code of Regulations

Dear Ms. Berger and Ms. Maggio:

We have previously submitted correspondence to the Board, as part of the prior regulatory hearings, expressing our views and concerns regarding the delegation of authority to the Executive Officer to compel physical or mental examinations. We ask that such information be included in the package that is ultimately submitted to the Office of Administrative Law for their consideration, should these proposed regulations move forward.

If the Board moves forward with the proposed regulatory change, the Board of Directors of CAMFT plans to pursue legislation to make it clear in law that there is no need for recusal of BBS board members who participate in Business and Professions Code Section 820 proceedings and thereafter participate in proceedings under Section 822.

While we are convinced that current law allows the full board to participate in both proceedings without the need for recusal, we seek this legislation because your Board has been advised by counsel that recusal is required as a result of due process concerns. We believe the Legislature, with its Committee structure and the opportunity to fully air the issue, will provide both CAMFT and the Board an opportunity to be heard and our respective viewpoints to be evaluated by policymakers.

We are also considering amending the law to specifically prohibit licensing agencies from delegating to Executive Officers the authority to *issue orders* for physical or mental examinations under Section 820. We believe that the legislative intent of Section 820 through 828 is in fact to have *Boards* act after they have reviewed the evidence that supports the need for such orders to be issued.

We believe that much of what has occurred thus far with respect to the Board of Behavioral Sciences' understanding of the need for such a delegation is based

Page two
Board of Behavioral Sciences
September 12, 2006

upon misinformation. We simply intend to test our belief with the Legislature, with the benefit of the viewpoints of other professions and other licensing agencies.

We again respectfully request that you not move forward at this time with the proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Riemersma".

Mary Riemersma
Executive Director

**Subject: Response to Third Set of CAMFT Comments
Concerning Delegation of Authority to the Executive Officer**

On or about July 3, 2006, the California Association of Marriage and Family Therapists (CAMFT) submitted a third set of comments in opposition to the Board's proposed regulation that would delegate authority to the Executive Officer to order psychiatric examinations of licensees who appear to be impaired because of mental illness.

1. CAMFT States:

We were concerned when we discovered, after the regulatory hearing on May 18, 2006, that while the Board was provided with materials that seemingly included Sections 820 through 828 of the Business and Professions Code, Section 825 was not included. Additionally, there was no indication on the materials that one or more sections were omitted.

* * * *

Section 825, which was disturbingly omitted from the materials, provides an exception to the general rule that the Board would issue the order for an examination.

Response

Business and Professions Code Section 825 provides that:

As used in this article *with reference to persons holding licenses as physicians and surgeons*, ‘licensing agency’ means a panel of the Division of Medical Quality.

CAMFT relies on this Section for the proposition that “*the Board itself*” would issue an examination order.” Such an inference is wholly unwarranted.

- 1) Section 825 has no direct relevance to the Board. It is addressing the status of a Division within the California Medical Board. This was done because the Medical Board, unlike virtually every other DCA board, consists of two divisions. (B. & P. Code § 2003.)
- 2) By going through this analysis, CAMFT has basically established a truism: “The Board is the Board.” Or: “The Board is the Licensing Agency.” But the identity or composition of a Board has absolutely no bearing on whether that particular Board or any other DCA Board can delegate its authority.

2. **CAMFT states:**

The proceedings being referred to [in Section 820] are the proceedings contemplated by the Legislature – that the Executive Officer and others involved in the investigation of the matter would present evidence to the Board so that the Board could determine (a quasi-judicial function) whether or not to issue an order [to examine the licentiate].

Response

- 1) CAMFT assumes for a fact the very thing it is trying to demonstrate; namely, that in all circumstances the Board itself must make the decision to order a mental examination.
- 2) CAMFT states that the Board’s determination is a “quasi-judicial” function. No legal support is offered for this bald statement. The reason is because there is none. (See my previous memos of April 19 and May 15, 2006.)
- 3) CAMFT’s suggestion leads to an absurd and contradictory result. Any order the Board issues would have to be reached as a collective decision with a quorum of the Board present. That would require a meeting conducted pursuant to the Bagley-Keene Open Meeting Act. Section 827 acknowledges the need to follow the Bagley-Keene Act when the Board is acting in its collective capacity. It provides in part as follows:

Notwithstanding the [Bagley-Keene Act] relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate’s mental or physical illness *obtained pursuant to the proceedings under Section 820.*

The closed session being referred to is for a proceeding *following the mental examination*. Evidence gathered from the examination is considered by the Board. Section 827 permits consideration of that evidence in closed session. But nothing is said in Section 827 authorizing a closed session to consider whether to *order* the examination in the first instance. This omission is telling. It indicates that the act of ordering of the investigation is not an adjudicatory function that must be performed by the whole Board. Thus, there is no need to exempt this function from the open meeting requirements of the Bagley-Keene Act. Had there been, the Legislature would surely have included it along with the proceedings *following* the examination.

Given Section 827, CAMFT is placed in an untenable position. There is no “notwithstanding the Bagley-Keene Act” to apply to what takes place when the examination is initially *ordered*. If the full Board must be involved, then it must meet subject to all the provisions in the Bagley-Keene Act. Unless there is a provision in the Bagley-Keene Act which permits a closed session, the Board’s decision would have to be deliberated before the public.

The only provision of the Bagley-Keene Act which might conceivably permit a closed session is found in Government Code Section 11126(c)(2). It provides in part that:

(c) Nothing in this article shall be construed to do any of the following:

* * * *

(2) Prevent *and advisory body* of a state body that administers the licensing of persons engaged in business or professions from conducting a closed session to discuss matters that the advisory body found would constitute an unwarranted invasion of privacy of the individual licensee or applicant if discussed in an open meeting, *provided the advisory body does not include a quorum of the members of the state body it advises*.

Under CAMFT’s non-delegation doctrine, this provision could never be utilized. The reason is that an “advisory body” of the Board which is referred to in Section 11126(c)(2) *cannot be the full Board*. The advisory body cannot consist of a quorum of the Board. Yet under CAMFT’s non-delegation doctrine, it is impossible for anyone other than the full Board to perform this function. But if only the full Board can order mental examinations, the provisions of Section 11126(c)(2) cannot apply.

Thus, consideration of whether to order the mental examination would have to be done in open session. That means the public would be privy to intimate and personal details about a licensee's possible mental illness prior to the time anything has been formally alleged or adjudicated. Such a process would undoubtedly constitute an unwarranted invasion of the licensee's privacy as well as a violation of his or her due process rights.

3. **CAMFT States:**

Could the Board's power to both issue the order and later take disciplinary action based upon the results of the examination be spelled out any better? [Emphasis in original.]

Response

While the Board is a recognized legal entity, its functions cannot be performed by a box on an organization chart. Individuals who are either Board members or staff have to perform them. CAMFT appears not to appreciate the constitutional problem of having the same *individuals* who *act on behalf of the Board* performing the dual function of prosecution as well as adjudication.

4. **CAMFT States:**

Sections 826 of the Business and Professions Code makes clear that the licensing agency has all of the rights and powers granted in Chapter 5 (commencing with [Government Code] Section 11500 – Administrative Adjudication: Formal Hearings) Those rights and powers, and the definitions (e.g., “Board itself”) contained in Section 11500 *are not applicable to proceedings conducted under Section 820*. If those rights and powers (including the right or power to delegate) were applicable or intended to be applicable, Section 826 would not be expressly limited to the proceedings under Section 821 and 822.

Response

CAMFT wants to have it both ways. It argues that the function of ordering a Section 820 mental examination is an adjudicatory function (i.e. “quasi-judicial”). But it also notes that the APA does not apply to this quasi-judicial function. Yet if an adjudicatory or quasi-judicial function were involved, the APA would normally apply. (Govt. Code § 11501(b).) The obvious answer is that the function of ordering a mental examination under Section 820 is not an adjudicatory proceeding. Thus, there is no need for the APA to apply to this section.

CAMFT's argument also turns statutory law on its head. CAMFT presumes that the right to delegate must be established in the APA. Because the APA doesn't apply to Section 820, CAMFT

assumes none of its functions can be delegated. But the only thing the APA does is to **restrict** rather than **establish** the right to delegate. When the APA refers to the “agency itself,” there can be no delegation. If the APA does not apply in the first instance, neither does its non-delegation prohibition. In situations where the APA doesn’t apply, other sources of law control whether the agency can delegate. If this were not the case, then those State agencies which do not conduct functions governed by the APA would be placed in an impossible legal straightjacket.

5. CAMFT States:

The Executive Officer doesn’t have that authority because the intent of the Legislature was that the power to **issue an order** was given to the Board – and in the case of physicians and surgeons, to a panel. [Emphasis in original.]

Response

Since CAMFT has lumped the Board of Behavioral Sciences together with the Medical Board, an examination of how that Board has delegated its authority is clearly in order. CAMFT initially cited Section 825 which referred to “a panel of the Division of Medical Quality.” The Division’s regulations are found in Chapter 2 of Division 13 of Title 16 of the California Code of Regulations.

Section 1356 is the Division’s general delegation regulation. It provides that:

Except for those powers reserved exclusively to the ‘agency itself’ under the Administrative Procedure Act Section 11500, et seq. of the Government Code, the division delegates and confers upon the executive director of the board, the assistant executive director, the medical consultant, chief enforcement, or his or her designee, all functions necessary to the dispatch of business of the division in connection with investigative and administrative proceedings under the jurisdiction of the division.

Section 1356 reinforces several key points that directly rebut CAMFT’s basic arguments.

- 1) Delegation is prohibited for the Division of Medical Quality only where the APA requires action by the “agency itself.” Recall that CAMFT is attempting to argue just the opposite. It claims that the **absence** of any reference to the APA with respect to Section 820 means there can be no delegation.
- 2) Section 1356 delegates functions not covered by the “agency itself” in the APA. That would appear to include the equivalent of ordering mental examinations of impaired licentiates. Section 1356 is in the Code of Regulations. It was approved by the Office of Administrative Law and is presumed to not only be valid, but also consistent with existing statutory law.

Specific examples of functions delegated to various staff executives of the Medical Board include:

- 1) Denying a licensee admission to the Impaired Physician Program. (§1357.4.)
- 2) Terminating a physician's participation in that program. (§ 1357.5)
- 3) Issuing citations containing fines and orders of abatement. (§ 1364.10(b).)
- 4) Issuing citations for unlicensed practice. (§ 1364.13.)
- 5) Issuing public letters of reprimand. (§ 1364.20.)

All of these functions involve the issuance of orders. Yet under CAMFT's interpretation of the law, they could only be performed by a panel of the Division of Medical Quality.

6. CAMFT States:

The Board cannot delegate acts that are discretionary or quasi-judicial in nature.

Response

This issue was addressed in the memoranda of April 19 and May 15.

7. CAMFT States:

CAMFT sees little need to adopt this regulation in order to avoid the problem of Board members having to recuse themselves from participating in the adjudicatory processes because they previously ordered a mental examination. It questions whether there would be problems of achieving a quorum.

Response

- 1) Under CAMFT's non-delegation doctrine, Board members should not be permitted to issue these orders. That could only be done by the Board acting in its collective capacity. Thus, this appears to be an implicit admission by CAMFT that some forms of delegation of Section 820 functions are permissible, while others are not.
- 2) Quorum problems have perennially plagued DCA Boards. From time to time, vacancies occur. That will sometimes necessitate attendance of all appointed members in order to achieve a quorum. If a Board is operating at the minimum number of members necessary for a quorum, any recusals will mean that it cannot take action. Thus, to not address this problem and at the same time provide the Board with maximum flexibility would seem ill-advised.



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understanding of
the profession of
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both an art
and a science, to
maintaining high
standards of
professional
ethics and
qualifications,
and to expanding
the recognition
and utilization of
the profession.*

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July 3, 2006

Board of Behavioral Sciences
1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834

Re: Proposed Amendment to Section 1803, Title 16 of the CCR
Hearing Date – July 27, 2006

Dear Members of the Board:

This proposal is unwise and unnecessary for the reasons indicated in our two prior letters (February 14 and May 15, 2006) and in this letter. The proposal removes an important power from the Board and puts it into the hands of one individual. It impermissibly removes the “checks and balances” (due process) provided for by the Legislature, and does so for no valid reason, as described below.

The Applicable Law Regarding Ordering Physical or Mental Exams

We first address the spirit and intent, and the actual content, of Business and Professions Code Sections 820 through 828, which, among other things, allows **licensing agencies to order** a licentiate to be examined by one or more physicians and surgeons or psychologists (designated by the agency) whenever it appears that the licentiate may be unable to practice safely because his or her ability to practice is impaired due to mental illness, or physical illness affecting competency.

We were concerned when we discovered, after the regulatory hearing on May 18, 2006, that while the Board was provided with materials that seemingly included Sections 820 through 828 of the Business and Professions Code, Section 825 of the Code was not included. Additionally, there was no indication on the materials that one or more sections were omitted. This omission is important because when one reads all of the relevant sections, it becomes evident that the Legislature contemplated that **the Board itself** would issue an examination order after being presented with evidence that such an order was warranted.

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July 3, 2006
Board of Behavioral Sciences

To that effect, Section 828 begins with the following phrase: "If the licensing agency determines, *pursuant to proceedings conducted under section 820*, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, *then all licensing agency records of the proceedings....*" The proceedings being referred to are the proceedings contemplated by the Legislature—that the Executive Officer and others involved in the investigation of the matter would present evidence to the Board so that the Board could determine (a quasi-judicial function) whether or not to issue an order.

Section 825, which was disturbingly omitted from the materials, provides an exception to the general rule that the Board would issue the order for an examination. This section provides that the term "licensing agency," with respect to physicians and surgeons, means a panel of the Division of Medical Quality (rather than the Board itself). The clear implication is that with respect to other professions, the term "licensing agency" means the Board, not the Executive Officer or a panel. If the Legislature had intended Executive Officers to have the power to issue examination orders, the law would read differently. *Why doesn't the Board simply seek to amend the law to allow its Executive Officer to issue such orders if it believes that this is good public policy and consistent with due process and fundamental fairness?*

Specific Purpose for Proposed Regulation Based Upon Misunderstanding the Law

In its Initial Statement of Reasons, the Board asserts the specific purpose for the proposed amendment. First, it describes the regulation as allowing the Executive Officer to "sign orders" to compel an examination, as if this is a ministerial act—the mere signing of the order. Instead, the actual power sought is the power to decide whether or not to issue an order.

It is then stated that "it was determined that issuing the order is an investigatory function and should not be performed by Board members who also serve as judges in the administrative adjudication process." *This determination is clearly contrary to the plain language of Section 824 of the Business and Professions Code*, which states that the licensing agency may proceed against a licentiate under Section 820, or 822, or under both sections. Could the law be any clearer? *Could the Board's power to both issue the order and later take disciplinary action based upon the results of the examination be spelled out any better?*

Section 826 of the Business and Professions Code makes clear that the licensing agency has all of the rights and powers granted in Chapter 5 (commencing with Section 11500 – Administrative Adjudication: Formal Hearings) of Part 1 of Division 3 of Title 2 of the Government Code. Those rights and powers, and the definitions (e.g., “Board itself”) contained in Section 11500 ***are not applicable to proceedings conducted under Section 820.*** If those rights and powers (including the right or power to delegate) were applicable or intended to be applicable, Section 826 would not be expressly limited to the proceedings under Sections 821 and 822.

The Legislature intended that the Board—not the Executive Officer - would order the licensee to be examined. This order for examination would be based upon the presentation by the Executive Officer of sufficient evidence that the licensee may be unable to practice safely because his or her ability to practice is impaired due to mental illness, or physical illness affecting competency. Such a determination should not be made by an Executive Officer alone, with no “checks and balances.” ***If the Board is truly concerned about due process, surely it must see that due process is best served when the Board hears or reviews evidence that supports the issuance of such an order. Giving this discretionary and quasi-judicial function to the unchecked judgment of one individual – the one who is seeking an order – is not due process. It is the denial or removal of due process!***

Factual Basis/Necessity for Proposed Regulation is Inadequate and Questionable

The Initial Statement of Reasons simply asserts that the proposal is necessary in order to provide the Board’s executive officer with the authority ***to sign orders*** because the executive officer does not now have that authority. The Executive Officer doesn’t have that authority because the intent of the Legislature was that the power to ***issue an order*** was given to the Board—and in the case of physicians and surgeons, to a panel. So, the assertion in the Initial Statement of Reasons is that since the Executive Officer doesn’t have the power now, this regulatory proposal would acquire that power for the Executive Officer. However, a delegation of the power from the Board to the Executive Officer to issue an order under Section 820 of the Business and Professions Code appears impermissible.

It appears that there is an effort to convince the public (and OAL) that a delegation of authority to the Executive Officer would be for performance of a mere ministerial act—that is, a mere signing of the order. Additionally, the Initial Statement of Reasons indicates that, in the past, the Board had the order signed by the Board Chair. This past

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July 3, 2006
Board of Behavioral Sciences

practice seems questionable, since it again appears that there is a mere "signing," rather than a proceeding, where some showing is made to the Board to justify issuance of the order. ***The Board cannot delegate acts that are discretionary or quasi-judicial in nature.***

It was also mentioned at public meetings that because the person who signed the order (the Chair) had to recuse himself/herself, it was sometimes difficult for the Board to achieve a quorum. Such an explanation seems insufficient. Even if a recusal was necessary, the Board would need six out of ten remaining members to achieve a quorum (assuming a full Board). Since these proceedings would typically be held at the same time as the Board considered disciplinary matters, it is unlikely that achieving a quorum would be endangered, unless Board members were regularly failing to attend meetings. Furthermore, as everyone seems to agree, there are few of these matters over the course of a year – perhaps one or two per year, if that.

Again, why not approach the Legislature and seek the power for the Executive Officer to order an examination if there are such compelling and appropriate reasons to do so? ***Why not seek clarification on the issue of whether or not the full Board could properly, under existing law, issue the order for an examination and subsequently take disciplinary action, if warranted, without any need for recusal?*** We believe that the law is clear on this point and there are ways, should the will be there, to clarify this essential point.

We urge the Board to reconsider its position on this important issue. It is not too late to do the right thing.

Sincerely,



Mary Riemersma
Executive Director

Memorandum

**To: Members of the Board
of Behavioral Sciences**

Date: May 15, 2006

**From: George P. Ritter
Senior Staff Counsel**

Telephone: (916) 574-8220

FAX: (916) 574-8623

**Subject: Response to Second Set of CAMFT Comments
Concerning Delegation of Authority to the Executive Officer**

The California Association of Marriage and Family Therapists (CAMFT) continues to labor under two basic misconceptions. The first is that it is not possible under current law for the Board to delegate its investigative functions. The second is that the Board can function as both investigator and judge without violating the Due Process Clauses of the State and Federal Constitutions.

CAMFT states:

[T]he Legislature expressly authorized the licensing agency . . . to conduct both functions. . . . The Legislature did not expressly authorize the Executive Officer to conduct either function *nor did it expressly provide for a delegation of power to others*. In fact, the legislative intent appears to be otherwise.

* * * *

The suggestion that there is a high probability that a licensee's due process rights will be violated because the individual involved in both functions are the same (all eleven Board members, for example) is rather curious and troubling.

* * * *

Additionally, it is illogical and directly in conflict with the law to suggest that if the same individuals are involved (Board members) in ordering an exam . . . and in ultimately revoking the license . . . , there is any due process problem.

In other words:

- 1) The Board as a collective body must perform all investigative functions.
- 2) Following any investigation that results in disciplinary action, the Board can then hear the case.

If CAMFT's statements are taken at face value, they lead to results that are absurd, impractical and unconstitutional.

CAMFT apparently fails to grasp that even under current regulations, the Board *as a collective body* does not order psychiatric or physical examinations. Rather, that function has been delegated to the Board Chair. That is no less a delegation than one made to the Executive Officer.

The Board has two methods of operating. It can act either directly or indirectly through committees or individuals. If the Board acts directly, it can only do so as a collective body. “[A]ction taken” by a board “means a collective decision made by [its] members.” (Govt. Code § 11122.) Action can only be taken by a majority or quorum of the Board at a noticed public meeting. (Govt. Code § 11125.3.) Thus, under CAMFT’s “no-delegation” doctrine, *every* decision initiating an investigation would have to be made by the Board acting as a collective body at a noticed public meeting.

Without delegation, the Board would have to act as both investigator and an adjudicative body on the same case. This would create an obvious Due Process problem. However, in light of repeated objections from CAMFT, the obvious apparently needs to be stated.

‘It is an ancient maxim applicable in all cases, civil or criminal, where judicial functions are to be exercised, whether in proceedings of inferior tribunals or in courts of last resort, *that no man ought to be a judge in his own cause*, a natural right so inflexible that an act of parliament seeking to subvert it would be declared void.’ (*Cadenasso v. Bank of Italy*, 214 Cal. 562, 566, 6 P.2d 944 (1932) [Emphasis added].)

Under the CAMFT “non-delegation” doctrine, Board members, acting either individually or as a collective body, must initiate the investigation. That investigation becomes *their cause*. If it is their cause, they cannot later sit in judgment of it. Thus, without the ability to delegate its investigatory functions, the Board would cease to effectively operate as an enforcement body.

CAMFT cites *Schechter v. County of Los Angeles*, 258 Cal. App. 2d 391, 65 Cal. Rptr. 739, 742 (1968) for the proposition that discretionary functions may not be delegated. CAMFT apparently did not read the cited cases which followed. They specifically held that investigatory functions are in the class of those which can be delegated.

CAMFT states:

Ordering a psychiatric exam, we strongly suggest, is both a discretionary act and it is quasi-judicial in nature.

CAMFT’s “strong suggestion” is directly undercut by both statutory and case law. Cases previously cited hold that:

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be

surrendered or delegated to subordinates in the absence of statutory authorization.
[Citations.]

On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action. [Emphasis added.] *California School Employees Ass’n. v. Personnel Cmm’n.*, 3 Cal. 3d 139, 144, 89 Cal. Rptr. 620 (1970).

* * * *

Even in [the] absence of such express authority, the commission would have implied power to employ him. . . . Section 7 of [an article in the Charter], however, imposed the duty of determining respondent’s moral character . . . upon the commission. The performance of this duty it could not delegate. . . . ***But the wording of the proviso shows no illegal delegation of power but merely the lawful employment of the chief of police to gather information for the use of the commission in discharging its duty.*** (*Levesahl v. Byington*, 1 Cal. App. 2d 671, 676, 37 P.2d 179 (1934) [Emphasis added].)

CAMFT’s statement that an investigation is an adjudicatory function betrays a basic lack of understanding of the Administrative Procedures Act. Government Code Section 11405.20 defines “adjudicatory proceeding” to mean:

[A]n evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.

CAMFT also erected a classic straw man argument with its statement that Section 11500 of the Government Code “does not support . . . delegation.” It notes that this Section has no application to Section 820 of the B. & P. Code, but does apply to Sections 821 and 822. Any action taken pursuant to Sections 821 and 822 must be conducted in accordance with the APA. (B. & P. Code § 826.) But CAMFT notes there is no reference to Section 11500 in Section 820. Thus, CAMFT comes to the conclusion that it was erroneous to cite a provision in the APA (i.e. § 11500) to make the point that the Board can delegate its investigatory authority.

Even if this convoluted argument had merit, it begs the question about whether investigative functions can be delegated. More importantly, CAMFT missed the obvious reason why there is an absence of a reference to the APA with respect to investigations conducted under Section 820. ***Those investigations are not adjudicatory functions.*** Hence, there is no need to make any reference to the APA. The APA does not apply.

By highlighting the differences in investigative and adjudicatory functions, CAMFT has labored to uncover an obvious truism. It runs counter to its assertion that a Section 820 investigation is

adjudication. The Board's adjudicatory functions cannot be delegated. But its investigatory functions can. Thus, in attempting to erect a straw man, CAMFT hoisted itself on its own petard.

Moreover, Section 11500 was cited to demonstrate that the APA recognized a fundamental distinction in the law relating to delegation of powers. When the words "agency itself" are used, the power cannot be delegated. Otherwise, it can. Section 11500 also recognizes the general principle that the head of the agency or the actual board does not and cannot carry out all of its functions.

CAMFT has turned this principle on its head. It takes the position that *unless* there is a specific reference to a subordinate officer within the Board or agency, no functions can be delegated to that individual. This interpretation leads to obviously absurd and unworkable consequences. For example, Business and Professions Code Section 108 provides that each of the Boards within the Department of Consumer Affairs:

[E]xists as a separate unit, and has the functions of setting standards, holding meetings, . . . preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction . . . in so far as those powers are given by statute to each respective board. (B. & P. Code § 108.)

Board members cannot be expected to "prepare and conduct examinations" or "pass upon applicants?" By the same token, they cannot be expected to "conduct investigations."

To avoid these obvious legal truisms, CAMFT even goes to more absurd lengths to distinguish the principle enunciated in Section 11500. CAMFT states that:

Moreover, the definitions of 'agency' and 'agency itself' in Section 11500(a) have no direct relevance to the meaning of the term 'licensing agency,' as used in Section 820. The term 'licensing agency' is not addressed in Section 11500(a).

That argument is tantamount to saying: "A Chevrolet is not an automobile."

What CAMFT fails to recognize is that Section 11500 does not in and of itself confer any powers on a particular State agency such as the Board. But Section 11182 of the Government Code which CAMFT has consistently ignored does. It provides that:

The head of a department may delegate the powers conferred upon him . . . to any officer of the department he authorizes to conduct the investigation or hearing.

Given the above, it is my opinion that the objections submitted by CAMFT are wholly without merit.



We're here for *You!*

May 11, 2006

Paul Riches, Executive Officer and
Members of the Board of Behavioral Sciences
1625 North Market Boulevard, Suite S200
Sacramento, CA 95834

*CAMFT is
dedicated to the
advancement and
understanding of
the profession of
marriage and
family therapy as
both an art
and a science, to
maintaining high
standards of
professional
ethics and
qualifications,
and to expanding
the recognition
and utilization of
the profession.*

Re: Proposed Amendment to Section 1803 in Title 16 of the CCR

Dear Members of the Board:

CAMFT has previously submitted a letter in opposition to the proposed amendment to the above-referenced regulation. That letter was dated February 14, 2006, and I assume that it will be included in the materials submitted to the Office of Administrative Law. This letter is in further opposition to the proposal and is also in response to the memorandum to the Board from George P. Ritter, dated April 19, 2006.

CONSISTENCY

Under the section of the Ritter memorandum entitled "Consistency" (pages one and two), it is acknowledged, as CAMFT points out in its letter to the Board dated February 14, 2006, that the Legislature expressly authorized the licensing agency (in this case, the Board of Behavioral Sciences) to conduct both functions – that is, to **order** a psychiatric exam and take subsequent disciplinary action if warranted by the facts and circumstances. The Legislature did not expressly authorize the Executive Officer to conduct either function nor did it expressly provide for a delegation of the power to others. In fact, the legislative intent appears otherwise.

With regard to physicians and surgeons, for instance, the Legislature specifically says (in Section 825 of the Business and Professions Code) that the term "licensing agency" means a panel of the Division of Medical Quality. A thorough reading of all of the sections related to this subject strongly suggests that the intent of the Legislature was that the licensing agency – the Board- perform these functions. The memorandum then cites Section 11500 of the Government Code as support for its position that the power to order a psychiatric exam can be delegated to the Executive Officer. That section of the law does not support a delegation.

California Association
of Marriage and
Family Therapists

First, the definitions contained in 11500(a) are, according to that section, for purposes of that chapter, which applies specifically to the filing of the Accusation, the notice of defense, discovery, and the administrative hearing and decision. That chapter and the

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laws contained therein, like 11500(a), have no application to an order for a psychiatric exam under section 820 of the Business and Professions Code. Additionally, the definitions of “agency” and “agency” itself in Section 11500(a) have no direct relevance to the meaning of the term “licensing agency,” as used in Section 820. The term “licensing agency” is not even addressed in Section 11500(a). **Finally, and most importantly, Section 826 of the Business and Professions Code makes clear that the definitions contained in Section 11500 of the Government Code apply to proceedings under 821 and 822 – not to orders under Section 820 of the Business and Professions Code!**

NECESSITY

Under the section of the Ritter memorandum entitled “necessity” (page 3), it is suggested that “CAMFT can hardly take the position” that the Board should permit violations of due process to continue if it is now determined that due process is compromised by the fact that the same *individuals* are involved with the functions under Section 820 and 822 of the Business and Professions Code. To the contrary – we take the position that for the last two decades, when the Board was doing exactly what the Legislature intended and authorized in Sections 820 and 822, there was no due process problem.

The suggestion that there is a high probability that a licensee’s due process rights will be violated because the *individuals* involved in both functions are the same (all eleven Board members, for example), is rather curious and troubling. **The threat to a licensee’s due process is apparent in delegating the power to order a psychiatric exam from the Board (where a showing has to be made to a regulatory body) and giving it to one individual who can decide, without scrutiny, to issue an order of such magnitude.**

Additionally, it is illogical and directly in conflict with the law to suggest that if the same individuals are involved (Board members) in ordering an exam (Section 820) and in ultimately revoking the license (Section 822), there is any due process problem. **The Legislature expressly states in a separate statute that the licensing agency may proceed against a licensee under either section 820, or 822, or both! Did the Legislature not realize that the same individuals would be involved in both functions because the licensing agency is made up of individual board members?**

Further, it is our position that the attorneys for the Department of Consumer Affairs Legal Office properly advised the BBS and the other boards within the Department of Consumer Affairs for the past twenty years when they allowed the Board to order a

psychiatric exam and then to take disciplinary action, when appropriate. **If it is in fact a violation of due process for the Board to perform both functions, as asserted in the Board's Initial Statement of Reasons for this proposed regulation, then all Boards should forthwith act to amend the law. Let the Department of Consumer Affairs rush to the Legislature and bring to its attention such a view of due process violations over the past twenty years and their desire to rectify the situation.**

AUTHORITY

Under the section of the Ritter memorandum entitled "authority" (pages three through seven), it is interesting to note the reference on page six to the case of *Schechter v County of Los Angeles*, wherein it is stated: "... there is no authority to delegate acts discretionary or quasi-judicial in nature." **Ordering** a psychiatric exam, we strongly suggest, is both a discretionary act and it is quasi-judicial in nature. It is not a mere administrative or ministerial act, which may be delegated as per the *Schechter* case. Mr. Ritter's memorandum, however, attempts to trivialize the Board's power to order an exam.

The memorandum, for instance, describes the investigation of a licensee's mental condition as "only a preliminary step" (first paragraph on page seven). Further, he asserts that "no action is taken by the Board" under Section 820. Yet, the action that the Board takes under Section 820 is to issue an order for a psychiatric exam by one or more physicians and surgeons or psychologists designated by the agency. This may only be done if it appears that a licensee is not only mentally or physically impaired, but that such impairment may affect the licensee's ability to practice his or her profession safely. Further, the report of the examiners can be used as direct evidence in license revocation proceedings. This is not a mere administrative or ministerial act!

SCOPE OF DELEGATION

Under the section of the Ritter memorandum entitled "scope of delegation" (page seven), it is stated that the board can make the terms of its regulations more specific than those in the statute. If the Board delegates the power to **order** an exam they will be expanding the law rather than making it "more specific." If the Board wants someone else to be allowed to order the exam, they should seek to amend the law to accomplish their purpose. In fact, if this is a good and proper idea, there is no reason why the law should not be amended to make clear to all boards that a delegation of this substantial power to one person, not a member of the Board, is appropriate. While we have not completed any

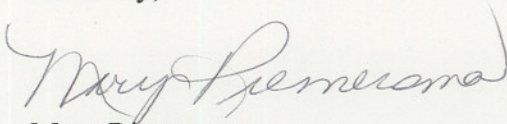
Page Four
Board of Behavioral Sciences
May 11, 2006

analysis of what other boards have done, we are not aware that any boards have moved in this direction.

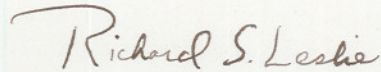
CONCLUSION

Our view is that this proposed regulation is not good policy, and that it is anti-due process and dangerous. Giving this awesome power to one individual – not even a Board member – is unwise and scary. Let there be a public policy debate within the Legislature involving all Boards and professions if this idea is to move forward.. Respectfully, we cannot sit by and allow this dangerous proposal – that eviscerates due process- to become effective. If the Board moves forward with this proposal and if it survives the scrutiny of OAL, we will have no alternative but to seek legislation to prohibit such a delegation.

Sincerely,



Mary Riemersma
Executive Director



Richard S. Leslie, Attorney
Consultant to CAMFT

May 1, 2006

Board of Behavioral Sciences
1625 North Market Boulevard, Suite S200
Sacramento, CA 95834

Re: Proposed Amendment to Section 1803 in Title 16 of the CCR

Dear Members of the Board:

CAMFT has previously submitted a letter in opposition to the proposed amendment to the above-referenced regulation. That letter was dated February 14, 2006, and I assume that it will be included in the materials submitted to the Office of Administrative Law. This letter is in further opposition to the proposal and is also in response to the memorandum to the Board from George P. Ritter, dated April 19, 2006.

CONSISTENCY

Under the section of the Ritter memorandum entitled "Consistency" (pages one and two), it is acknowledged, as CAMFT points out in its letter to the Board dated February 14, 2006, that the Legislature expressly authorized the licensing agency (in this case, the Board of Behavioral Sciences) to conduct both functions – that is, to **order** a psychiatric exam and take subsequent disciplinary action if warranted by the facts and circumstances. The Legislature did not expressly authorize the Executive Officer to conduct either function nor did it expressly provide for a delegation of the power to others. In fact, the legislative intent appears otherwise.

With regard to physicians and surgeons, for instance, the Legislature specifically says (in Section 825 of the Business and Professions Code) that the term "licensing agency" means a panel of the Division of Medical Quality. A thorough reading of Sections 820 through 828 strongly suggests that the intent of the Legislature was that licensing agencies (e.g., the Board) perform these functions. The Ritter memorandum then cites Section 11500 of the Government Code as support for its position that the power to **order** a psychiatric exam can be delegated to the Executive Officer. **That section of the law does not support such a delegation.**

First, the definitions contained in 11500(a) are for the purposes of that chapter only, which applies specifically to the filing of the Accusation, the notice of defense, discovery, and the administrative hearing and decision. **That chapter (includes Section 11500) has no application to an order for a psychiatric exam under section 820 of the Business and Professions Code. More specifically, Section 826 of the Business and Professions Code provides that the definitions contained in Section 11500 of the Government Code apply to proceedings under 821 and 822** (no reference to Section 820 is made). Moreover, the definitions of “agency” and “agency” itself” in Section 11500(a) have no direct relevance to the meaning of the term “licensing agency,” as used in Section 820. The term “licensing agency” is not addressed in Section 11500(a).

NECESSITY

Under the section of the Ritter memorandum entitled “necessity” (page 3), it is suggested that “CAMFT can hardly take the position” that the Board should permit violations of due process to continue, assuming that due process is compromised by the fact that the same *individuals* are involved with the functions under Sections 820 and 822 of the Business and Professions Code. To the contrary – we take the position that for the last two decades, when the Board was presumably doing what the Legislature intended and authorized in Sections 820 and 822, there was no due process problem.

The suggestion that there is a high probability that a licensee’s due process rights will be violated because the *individuals* involved in both functions are the same (all eleven Board members, for example), is rather curious and troubling. **The threat to a licensee’s due process is apparent in delegating the power to order a psychiatric exam from the Board (where a showing has to be made to a regulatory body) and giving it to one individual (not a board member) who can decide, without scrutiny, to issue an order of such magnitude.**

Additionally, it is illogical and directly in conflict with the law to suggest that if the same individuals are involved (Board members) in ordering an exam (Section 820) and in ultimately revoking the license (Section 822), there is any due process problem. **The Legislature expressly states in a separate statute that the licensing agency may proceed against a licensee under either section 820, or 822, or both. Did the Legislature not realize that the same individuals would be involved in both functions because the licensing agency is made up of individual board members? Note that the law also provides that the licensing agency is the entity charged with the duty to receive evidence prior to a reinstatement of a license – yet another process!**

Further, it is our position that the attorneys for the Department of Consumer Affairs Legal Office properly advised the BBS and the other boards within the Department for

the past twenty years when the **Boards** ordered psychiatric and physical exams and took disciplinary action, when appropriate. **If it is in fact a violation of due process for the Board to perform both functions, as asserted in the Board's Initial Statement of Reasons for this proposed regulation, then all Boards should forthwith act to amend existing law. Let the Department of Consumer Affairs rush to the Legislature and bring the fact of such due process violations over the past twenty years to their attention. Further, let the Department express its desire to remedy the alleged due process problem by providing for a delegation of the power to issue such orders to Executive Officers.**

AUTHORITY

Under the section of the Ritter memorandum entitled "authority" (pages three through seven), it is interesting to note the reference on page six to the case of *Schechter v County of Los Angeles*, wherein it is stated: "... there is no authority to delegate acts discretionary or quasi-judicial in nature." **Ordering a psychiatric exam, we strongly suggest, is both a discretionary act and it is quasi-judicial in nature.** It is not a mere administrative or ministerial act, which may be delegated as per the *Schechter* case.

The Ritter memorandum describes the investigation of a licensee's mental condition as "only a preliminary step" (first paragraph on page seven). Further, he asserts that "no action is taken by the Board" under Section 820. Yet, the action that the Board takes under Section 820 is to issue an order for a psychiatric exam by one or more physicians and surgeons or psychologists designated by the agency. This may only be done if it appears that a licensee is not only mentally or physically impaired, but that such impairment may affect the licensee's ability to practice his or her profession safely. Further, the report of the examiners can be used as direct evidence in license revocation proceedings. This is not a mere administrative or ministerial act!

The authorities cited by the Board for this proposed regulation are Section 4980.60 (MFT) and Section 4990.14 (LCSW) of the Business and Professions Code. Neither of these sections gives the Board the necessary authority. **Each of these sections gives the Board the authority to adopt regulations as may be necessary to enable it to carry into effect the provisions of Chapter 13 (MFT licensing law) and Chapter 14 (LCSW licensing law) of the Code.** It should be noted that any action taken under Section 822 of the Business and Professions Code is not considered to be "unprofessional conduct," either under the respective licensing laws or by Sections 820 through 828 of the Business and Professions Code.

SCOPE OF DELEGATION

Under the section of the Ritter memorandum entitled "scope of delegation" (page seven), it is stated that the board can make the terms of its regulations more specific than those in the statute. If the Board delegates the power to **order** an exam they will be **expanding**

the law rather than making it “more specific.” If the Board wants someone else to be allowed to order the psychiatric or physical exam, they should seek to amend the law to accomplish their purpose. In fact, if this is a good and proper idea, there is no reason why the law should not be amended to make clear to all boards that a delegation of this substantial power to one person, not a member of the Board, is appropriate. While we have not completed any analysis of what other boards have done, we are not aware that any boards have moved in this direction.

CONCLUSION

Our view is that this proposed regulation is not good policy, and that it is anti-due process and dangerous. Giving this awesome power to one individual – not even a Board member – is unwise and scary. Let there be a public policy debate within the Legislature involving all Boards and professions if this idea is to move forward.

Sincerely,

Mary Riemersma
Executive Director

Richard S. Leslie, Attorney
Consultant to CAMFT

Memorandum

To: Members of the Board
of Behavioral Sciences

Date: April 19, 2006

Telephone: (916) 574-8220

FAX: (916) 574-8623

From: George P. Ritter
Senior Staff Counsel

Subject: Response to Comments Concerning Delegation of Authority for
Ordering Psychiatric Examinations to the Executive Officer

I. BACKGROUND

Business and Professions Code Section 820 permits the Board to order a psychiatric examination of a licensee when it appears that his or her ability to practice is impaired due to mental illness. The Board now proposes through a regulation change to delegate the function of ordering these examinations to its Executive Officer. The California Association of Marriage and Family Therapists (CAMFT) has submitted comments in opposition to this proposed change. These comments are addressed below.

II. CONSISTENCY

Business and Professions Code Section 820 provides in part that:

Whenever it appears that any person holding a license . . . may be unable to practice his or her profession safely because of [mental or physical impairment], the licensing agency may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licensee and may be received as direct evidence in proceedings conducted pursuant to Section 822.

Section 822, in turn, provides that:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take [appropriate administrative] action [that would revoke, suspend or limit the licentiate's right to practice].

CAMFT correctly observes that the Legislature expressly authorized the Board to conduct both functions. Section 824 provides that: "The licensing agency may proceed against a licentiate under either section 820, or 822, or under both sections." Because the Legislature has delegated to the Board the authority to perform both functions, CAMFT apparently presumes no further delegation of either is legally possible.

This presumption is contrary to the basic law of delegation of administrative authority. For example, Government Code § 11500(a) provides that:

'Agency' includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word 'agency' alone is used *the power to act may be delegated by the agency*, and wherever the words 'agency itself' are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

Likewise, Government Code § 11182 provides that:

The head of a department may delegate the powers conferred upon him . . . to any officer of the department he authorizes to conduct the investigation or hearing.

Thus, the fact that a function has been delegated by the Legislature does not mean any further delegation is prohibited. Rather, the particulars of the delegation have to be analyzed in order to determine its legality.

III. NECESSITY

The stated reason for the regulatory change is to avoid the problem of having Board members who may later hear a disciplinary matter involved in its investigation. CAMFT apparently takes the position that because the Legislature authorized “the same agency” to perform both investigatory and adjudicatory functions, there is no need to alter this arrangement.

While it is true that administrative agencies perform both investigatory and adjudicatory functions, this in no way implies that the same *individuals* within the agency can do both. If that occurs, there is a high probability that the licensee’s due process rights will be violated. (See *Nightlife Partners, Ltd. v. City of Beverley Hills*, 108 Cal. App. 4th 81, 133 Cal. Rptr. 234 (2003) (Due process rights of nightclub were violated when City Attorney who represented the City in litigation against the nightclub also advised City officials hearing nightclub’s appeal of the denial of its license.)

Second, CAMFT postulates that if one accepts this proposition, then the Board “for the last decade or more . . . has been in violation of the due process rights of licentiates.” Even assuming this were the case, CAMFT can hardly take the position that the Board should permit such violations to *continue* and take no action to correct the problem.

IV. AUTHORITY

Chapter 13 of the Board’s enabling legislation regulates Marriage and Family Therapists (MFTs). CAMFT correctly points out that there is no provision in this Chapter that permits delegation of any authority to the Executive Officer. Section 4980.07 merely states that: “The Board shall administer the provisions of [Chapter 13].” CAMFT notes that the other provisions permitting delegation are found in Chapter 14. But that Chapter only applies to Licensed Clinical Social Workers. (See B. & P. Code §§ 4990.8 & 4990.13.) CAMFT thus concludes that under Chapter 13 the Board has no power to delegate any of its authority with respect to MFTs to the Executive Officer.

There are two reasons why CAMFT’s position is not legally sound. First, the Board does have the express statutory authority to delegate its investigatory functions. Second, the Board also has the implied authority to do so.

A. Express Delegation of Investigatory Authority

Even though the Board is a part of the Department of Consumer Affairs:

[It] exists as a separate unit, and has the functions of setting standards, holding meetings, . . . preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws *under its jurisdiction* . . . in so far as those powers are given by statute to each respective board. (B. & P. Code § 108.)

Likewise:

The boards, bureaus, and commissions in the department * * * * provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public (B. & P. Code § 101.6.)

In addition, Government Code Section 11180 provides in part that:

The head of each department may make investigations and prosecute actions concerning:

(a) All matters relating to the business activities and subjects under the jurisdiction of the department. . . .

This investigatory power includes the ability to issue administrative subpoenas. (Govt. Code § 11181.)

Boards within the Department of Consumer Affairs have consistently been recognized as possessing the investigatory powers conferred by Government Code Sections 11180 and 11181. In *Board of Medical Quality Assurance v. Hazel Hawkins Memorial Hospital*, 135 Cal. App. 3d 561, 565, 185, Cal. Rptr. 405 (1982), the validity of administrative subpoenas issued by the Medical Board was at issue. The Court noted that:

There is no question, but that the inquiry by [the Medical Board] is one that it is authorized to make. (See [B. & P. Code] §§ 101.6, 108; *Gov. Code*, §§ 11180 *et seq.*)

In *Arnett v. Dal Cielo*, 14 Cal. 4th 4, 7 - 8, 56 Cal. Rptr. 2d 706 (1996), the California Supreme Court observed that:

We deal here, however, with a tool that the Board has possessed at least since 1921; the investigative subpoena. (. . . . Stats. 1945, ch. 111, § 3, p. 439 [recodifying former Pol.Code, § 353, as Gov. Code, § 11181].)

* * * *

Because the statute authorizes the Board to issue a subpoena ‘in any inquiry [or] investigation’ (Gov. Code § 11181, subd. (e)), the Board may do so for purely investigative purposes (See also *Division of Medical Quality v. Gherardini*, 93 Cal. App. 3d 669, 673, 156 Cal. Rptr. 55 (1979) (Court acknowledged that Board’s investigatory power stemmed in part from Government Code Sections 11180 and 11181). 9 Ops. A.G. 35, 37 (1947) (Power of DCA boards to investigate under Section 11180 recognized by the Attorney General).)

The Legislature has expressly provided that the investigative power under Sections 11180 and 11181 may be delegated. Section 11182 provides that:

The head of a department may delegate the powers conferred upon him by this article to any officer of the department he authorizes to conduct the investigation or hearing.

The Medical Board’s authority to delegate these powers has also been recognized by the California Supreme Court.

[T]he Board’s investigators are authorized to exercise delegated powers . . . to ‘Inspect books and records’ and to ‘Issue subpoenas . . . in any inquiry [or] investigation’ (*Arnett v. Dal Cielo*, 14 Cal. 4th at 8, citing § 11182.)

B. Implied Delegation of Investigatory Authority

The Board also has the inherent or implied legal power to delegate investigatory functions to its Executive Officer even in the absence of any express statutory authority from the Legislature. The general rule is that:

[A] delegated power, when made subject to the [agency's] judgment or discretion, is purely personal and may not be further delegated in the absence of express statutory authorization. . . . [However,] [m]erely administrative and ministerial functions may be delegated to assistants whose employment is authorized [B]ut there is no authority to delegate acts discretionary or quasi-judicial in nature. An administrative board cannot legally confer upon its employees authority that under the law may be exercised only by the board. (*Schechter v. County of Los Angeles*, 258 Cal. App. 2d 391, 65 Cal. Rptr. 739, 742 (1968).)

The scope of the authority which could be delegated was clarified by the California Supreme Court in *California School Employees Ass'n. v. Personnel Cmm'n.*, 3 Cal. 3d 139, 144, 89 Cal. Rptr. 620 (1970). It noted that:

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. [Citations.]

On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action. [Emphasis added.]

The same rule was applied in *Levesahl v. Byington*, 1 Cal. App. 2d 671, 37 P.2d 179 (1934). The issue was whether the Civil Service Commission of San Francisco could delegate its investigatory powers to the Chief of Police. The Court noted the City Charter expressly gave the Commission this power. But it went on to hold that:

Even in [the] absence of such express authority, the commission would have implied power to employ him. . . . Section 7 of [an article in the Charter], however, imposed the duty of determining respondent's moral character . . . upon the commission. The performance of this duty it could not delegate. . . . ***But the wording of the proviso shows no illegal delegation of power but merely the lawful employment of the chief of police to gather information for the use of the commission in discharging its duty.*** (1 Cal. App. 2d at 676 [Emphasis added].)

This is precisely the type of investigatory and adjudicatory procedures envisioned under Sections 820 and 822 of the Business and Professions Code. Section 820 concerns the investigation of a licensee. No action is taken by the Board under this Section. The investigation of a licensee's mental or physical condition is only a preliminary step. The results of the examination can then be used in any adjudicatory "proceedings conducted pursuant to Section 822." Any action the Board then takes under that Section cannot be delegated. By contrast, the investigatory phase involving fact-gathering and conducting examinations can be.

V. SCOPE OF DELEGATION

CAMFT notes a disparity between the scope of examinations referred to in Section 820 and those delegated to the Executive Officer in the proposed regulation. Section 820 provides for examinations because of suspected mental or physical impairment. Yet only psychiatric examinations are referred to in the regulation.

As an administrative agency, the Board can make the terms of its regulation more specific than those in the statute. (See Govt. Code § 11342.600 – A "Regulation" "makes specific" statutory law.) Likewise, the Board is under no obligation to delegate everything even though it may be legally permissible to do so. At the same time, if the Board chooses to delegate, it seems to make little sense to delegate only with respect to one type of examination but not the other.

VI. CONCLUSION

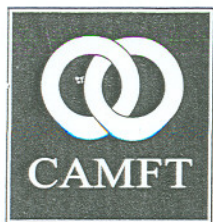
The distinction concerning administrative versus discretionary functions is critical. Once it is grasped, then the answer to the question raised by CAMFT in its last comment should be apparent. The Board has the power to delegate administrative or investigatory functions conducted under Section 820. It cannot, however, delegate its authority to hear and rule on adjudicatory cases under Section 822.

cc:

Paul Riches

Christy Berger

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BOARD OF
BEHAVIORAL SCIENCES
2006 FEB 21 AM 11:00

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February 14, 2006

CAMFT is

dedicated to the

advancement and

understanding of

the profession of

marriage and

family therapy as

both an art

and a science, to

maintaining high

standards of

professional

ethics and

qualifications,

and to expanding

the recognition

and utilization of

the profession.

Members of the Board

Christy Berger

Mona Maggio

Board of Behavioral Sciences

1625 North Market Blvd., Suite S-200

Sacramento CA 95834

Christy_berger@dca.ca.gov

Mona_maggio@bbs.ca.gov

RE: Proposed Regulatory Change to Section 1803, Division 18 of Title 16 of the California Code of Regulations, Regarding Delegation of Certain Functions to the Executive Office—i.e., Delegating Authority to Compel Psychiatric Evaluations

Dear Members of the Board, Ms. Berger and Ms. Maggio:

We wish to go on record in opposition to the proposal to modify the regulation giving authority to the Executive Officer of the BBS to "issue orders compelling psychiatric examinations in accordance with Section 820 of the Business and Professions Code." Our opposition is both technical and substantive. **We hereby request a public hearing on this proposed regulation.**

NECESSITY – Board's determination re: due process is contradicted by the law.

The Board states in its *Initial Statement of Reasons* that a) it was determined that an order under Section 820 of the Business and Professions Code is an investigatory function and ***should not be performed by board members who also serve as judges in the administrative adjudication process***, and b) ***due process requires*** that the investigatory function and the adjudication function be separate and performed by different parties.

The Legislature (the law) disagrees with both notions. Section 825 of the Business and Professions Code provides:

California Association
of Marriage and
Family Therapists

"The licensing agency may proceed against a licensee under either section 820, or 822, **or under both sections** (emphasis ours)."

7901 Raytheon Road
San Diego, CA 92111
P: (858) 292-2638
F: (858) 292-2666
www.camft.org

Section 822 allows the board to revoke or suspend if they determine that the licentiate's ability to practice safely is impaired by mental illness or physical illness affecting competency. **Thus, the Legislature addressed this issue and gave the power to the Board (the licensing agency) to order the examination (Section 820) and then to make a determination (Section 822)** based upon the outcome of the exam and other evidence. The *Legislature expressly authorizes* the same agency to proceed under 820 and 822 – *investigatory and adjudicatory*.

If one is to take the Board at its word, then the process used (for the last decade or more) has been in violation of the due process rights of licentiates. Is this actually the position of the Board? Who made this determination and when? Is there a written legal opinion regarding this matter?

REFERENCE/AUTHORITY

Section 4980.07, cited as reference for the regulation, says that: "The board shall administer the provisions of this chapter." It says nothing about a delegation of power. However, a delegation of power is mentioned in Section 4990.8, also cited as reference, but that section does not apply to MFTs (Chapter 13). It applies only to Chapter 14 – the LCSW licensing law. Section 4990.13, also cited as reference, is also found in Chapter 14 – applicable to LCSWs. These two sections (4990.8 and 4990.13) have no application to the provisions of Chapter 13. The fact that only the Board is mentioned in Section 4980.07 is noteworthy. It doesn't say "or its delegatee."

Section 4980.07 would need to be amended by the Legislature in order to allow for a delegation to the executive officer of such an awesome power as the power to order an examination for suspected mental illness, for example. To vest this power in one person, without any built-in safeguards, seems unnecessary and somewhat dangerous. If such a delegation is sought, it ought to be through the legislative process. In fact, the Board should seek legislation similar to Section 825 of the Code, where a panel is authorized by the law to act in place of the "licensing agency" (applicable to physicians).

CLARITY

The Board's proposed regulation seeks to add the phrase "psychiatric examination." The law (Section 820) refers to an examination by one or more physicians and surgeons or psychologists re: impairment of the ability to practice due to mental illness or physical illness affecting competency. The proposed regulation, were it to move forward, should describe the examination as it is described in the statute and not by use of the words "psychiatric examination." Use of those words is actually more limiting – it seemingly prevents orders for physical (non-psychiatric) examinations where physical illness may affect competency.

QUESTION TO PONDER

If the Board has the authority to delegate to the Executive Officer the power to act on their behalf under Section 820, why doesn't it follow that they have the authority to delegate to the Executive Officer under 822 as well? Such a result would be absurd.

These orders are typically issued from the Board after a factual showing that a licensee is impaired due to mental illness. The licensee has an opportunity to respond. While the process may still require such a showing and a response, it appears to give a much greater opportunity for abuse when such authority is granted to a single person. One individual given the responsibility to make such a significant decision versus the members of the Board, where a majority of a quorum would be needed, seems to be delegating too much authority to one person, and creating too great an opportunity for this authority to be abused. Even the Medical Board utilizes the decision of a panel of the Board to make such a significant decision.

We respectfully request that this proposed regulation be withdrawn. Thank you for the opportunity to be heard on this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Riemersma".

Mary Riemersma
Executive Director

Cc: Paul Riches, Executive Officer

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PART XIV

ALL FISCAL IMPACT/COST ESTIMATES/STD 399

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ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Consumer Affairs/Bd of Behavioral Sciences	CONTACT PERSON Christy Berger	TELEPHONE NUMBER 574-7847
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Delegation of Functions to Executive Officer		NOTICE FILE NUMBER Z-06-0130-03

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

☐ a. Impacts businesses and/or employees☐ e. Imposes reporting requirements☐ b. Impacts small businesses☐ f. Imposes prescriptive instead of performance standards☐ c. Impacts jobs or occupations☐ g. Impacts individuals☐ d. Impacts California competitiveness☒ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)h. (cont.) No economic impact because this proposal only makes a technical change in procedure and authority.

(If any box items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: 0 Describe the types of businesses (Include nonprofits): N/AEnter the number or percentage of total businesses impacted that are small businesses: 03. Enter the number of businesses that will be created: 0 eliminated: 0Explain: N/A4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (list areas) N/A5. Enter the number of jobs created: 0 or eliminated: 0 Describe the types of jobs or occupations impacted: N/A

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes☒ NoIf yes, explain briefly: N/A**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0a. Initial cost for a small business: \$ 0 Annual ongoing cost: \$ 0 Years: N/Ab. Initial cost for a typical business: \$ 0 Annual ongoing cost: \$ 0 Years: N/Ac. Initial cost for an individual: \$ 0 Annual ongoing cost: \$ 0 Years: N/Ad. Describe other economic costs that may occur: N/A

ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A
-
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ N/A
4. Will this regulation directly impact housing costs? ☐ Yes ☒ No If yes, enter the annual dollar cost per housing unit: \$ 0
and the number of units: 0
5. Are there comparable Federal Regulations? ☐ Yes ☒ No Explain the need for State regulation given the existence or absence of Federal regulations: This area of law is regulated at the state level
Enter any additional costs to businesses and/or individuals that may be due to State – Federal differences: \$ 0

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: The Board's licensees and registrants will benefit from this regulation because it will help to ensure due process in enforcement proceedings.
2. Are the benefits the result of: ☐ specific statutory requirements, or ☒ goals developed by the agency based on broad statutory authority?
Explain: B&P Code Sections 820 and 4990.8; Government Code Sections 11425.10(a)(4) and 11425(a)
3. What are the total statewide benefits from this regulation over its lifetime? \$ 0

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: Not pursue this regulatory change. This alternative is not acceptable because it would continue to allow the Board members, who serve as judges in administrative proceedings, to also order psychiatric evaluations, an investigation function. This would prevent licensees and registrants from receiving due process..
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- | | | |
|----------------|----------------------|-------------------|
| Regulation | Benefit: \$ <u>0</u> | Cost: \$ <u>0</u> |
| Alternative 1: | Benefit: \$ <u>0</u> | Cost: \$ <u>0</u> |
| Alternative 2: | Benefit: \$ <u>0</u> | Cost: \$ <u>0</u> |
| Alternative 3: | Benefit: \$ <u>0</u> | Cost: \$ <u>0</u> |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: N/A
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☒ No
Explain: N/A

ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)

E. MAJOR REGULATIONS *(Include calculations and assumptions in the rulemaking record.)*

Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☒ No *(If No, skip the rest of this section)*
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
- Alternative 1: _____
- Alternative 2: _____
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
- | | | |
|----------------|----------|---------------------------------|
| Regulation: | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 1: | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 2: | \$ _____ | Cost-effectiveness ratio: _____ |

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT

(Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
- ☐ a. is provided in (Item _____ Budget Act of _____ or (Chapter _____ Statutes of _____
- ☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCALYEAR)
- ☐ 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
- ☐ a. implements the Federal mandate contained in _____
- ☐ b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____
- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
(DATE) election;
- ☐ d. is issued only in response to a specific request from the _____
_____ which is/are the local entity(s) affected;
- ☐ e. will be fully financed from the _____
(FEES, REVENUE, ETC.) authorized by Section _____
_____ of the _____ Code;
- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each unit.
- ☐ 3. Savings of approximately \$ _____ annually.
- ☒ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
- ☐ 5. No fiscal impact exists because the regulation does not affect any local entity or program.
- ☐ 6. Other _____

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

B. FISCAL EFFECT ON STATE GOVERNMENT

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☒ 4. Other No fiscal impact exists because this regulation is only a technical change in procedure and authority. There would be no increase in costs.

C. FISCAL EFFECT OF FEDERAL FUNDING OF STATE PROGRAMS

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ _____ in the current Fiscal State Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other _____

SIGNATURE

TITLE

Paul Riches, Executive Officer

AGENCY SECRETARY ¹

APPROVAL/CONCURRENCE

DEPARTMENT OF FINANCE ²

APPROVAL/CONCURRENCE

PROGRAM BUDGET MANAGER

DATE

7/10/06

DATE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

PART XV

MATERIALS RELIED UPON

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**BOARD OF BEHAVIORAL SCIENCES**

400 R Street, Suite 3150, Sacramento, CA 95814-6240

Telephone (916) 445-4933

TDD (916) 322-1700

Website Address: <http://www.bbs.ca.gov>**DELEGATION OF AUTHORITY:****AUTHORITY TO ISSUE ORDERS TO COMPEL PSYCHIATRIC
EXAMINATION UNDER SECTION 820 OF THE BUSINESS AND
PROFESSIONS CODE**

Pursuant to the provisions of Section 7 of the Government Code and Sections 10 and 4990.8 of the Business and Professions Code, I, PETER MANOLEAS, Chairperson of the Board of Behavioral Sciences, hereby delegate to:

PAUL RICHES**Executive Officer
Board of Behavioral Sciences**

the authority and discretion to issue Orders Compelling Psychiatric Examination in accordance with section 820 of the Business and Professions Code.

This delegation of authority revokes any prior delegation of authority issued and shall remain in effect until revoked or suspended by a later delegation of authority.

Executed this FIFTH day of OCTOBER, 2005, in
Berkeley, California.

A handwritten signature in cursive script that reads 'Peter Manoleas'.

Peter Manoleas

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AGENDA ITEM IX

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members **Date:** October 31, 2006

From: Justin Sotelo
Regulations Analyst **Telephone:** (916) 574-7836

Subject: **Agenda Item IX - Review and Possible Action on Proposed Changes in the Regulations - 16 CCR 1833.1, Requirements for Supervisors, and 1870, Requirements for Associate Clinical Social Worker Supervisors**

Background

Section 1833.1 of the Board's regulations sets forth the requirements for supervisors of Marriage and Family Therapist (MFT) Interns and Trainees, including a requirement that the supervisor "...has practiced psychotherapy for at least two (2) years within the five (5) year period immediately preceding any supervision and has averaged at least five (5) patient/client contact hours per week."

Section 1870 of the Board's regulations sets forth the requirements for supervisors of Associate Clinical Social Workers (ASW), including a requirement that the supervisor "...has practiced psychotherapy as part of his/her clinical experience for at least two (2) years within the last five (5) years immediately preceding supervision."

The Board currently interprets supervision of an MFT Trainee, MFT Intern, or ASW to be "psychotherapy" for the purposes of meeting the practice requirements under Sections 1833.1 and 1870. However, this proposal would make this interpretation explicit in the regulations. It would also delete the requirement that supervisors of MFT Interns or Trainees average at least five (5) patient/client contact hours per week.

At its February 2003 meeting, the Board approved this proposal. However, the rulemaking process was never initiated for these changes. The proposed changes and recent revisions to the proposed language were taken up for review again at the Board's Policy and Advocacy Committee meeting in January 2006; however, the Committee declined to take action until receiving the results of the supervision survey.

At its April 2006 meeting, the Committee recommended that the Board pursue the proposed language. However, at the Board's May 2006 meeting, several board members expressed concern that some licensees would become supervisors after only two (2) years of licensure, never see clients again, but remain supervisors for the rest of their professional careers. There were also concerns expressed by stakeholders that the current restrictions are decreasing the number of licensees that are qualified to supervise. The Board decided to return this proposal to the Committee for further review and discussion.

At its June 28, 2006 meeting, the Committee reviewed the item, again recommended that the Board pursue the originally proposed language, and, additionally, recommended to delete the requirement that supervisors of MFT Interns or Trainees average at least five (5) hours of patient/client contact per week for at least two (2) years within the five (5) year period immediately preceding supervision.

The Board approved this proposal at its meeting on July 27, 2006.

Discussion

The proposed changes in the regulations were noticed on September 29, 2006 and comments regarding these proposed changes were received from the California Association of Marriage and Family Therapists and from an individual Licensed Clinical Social Worker. The comments, summaries of the comments, and staff recommendations regarding those comments are attached for the Board's review and discussion.

Recommendation

The Board is asked to consider written and oral comments received regarding these proposed changes, determine if modifications should be incorporated into the proposed language, and approve the final language. Should modifications to the originally proposed language be required (those that are nonsubstantial, grammatical in nature, or sufficiently related to the original proposal), the resulting modifications will be made available to the public for at least 15 days.

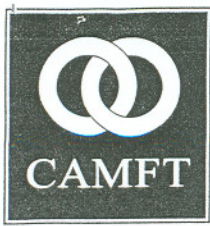
Attachments

ATTACHMENT

Agenda Item IX

Comments - Attachments 1A & 1B

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and to expanding
the recognition
and utilization of
the profession.*

California Association
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7901 Raytheon Road
San Diego, CA 92111
P: (858) 292-2638
F: (858) 292-2666
www.camft.org

BOARD OF
BEHAVIORAL SCIENCES

2006 OCT 19 PM 12:00

October 20, 2006

Justin Sotelo
Christy Berger
Board of Behavioral Sciences
1625 North Market Street, Suite S200
Sacramento, CA 95834
Justin_Sotelo@dca.ca.gov
Christy_Berger@bbs.ca.gov

RE: Proposed Regulations Regarding Requirements for Supervisors, CCR 1833.1
Proposed Regulations Regarding Delinquency Fees, CCR 1816.7
Proposed Regulations Regarding Board Approved Providers, CCR 1887.7
and 1887.75
Proposed Regulations Regarding Applications, CCR 1805
Proposed Regulations Regarding Examination Application Fees, CCR 1816.4
Proposed Regulations Regarding Inactive License Fees, CCR 1816.6

Dear Justin and Christy:

We appreciate the opportunity to comment on the various proposed changes to the Regulations of the Board of Behavioral Sciences. Most of our recommendations are intended to clarify the intent and understanding of the Regulations.

Requirements for Supervisors, CCR 1833.1(a)(6)(A)

We recommend changes as follows: "Persons licensed by the Board who provide supervision shall complete a minimum of six (6) hours of supervision training or coursework in each renewal period while providing supervision. . ."

Since supervisors are not licensed as "supervisors" by the Board, we request the clarification provided above. Additionally, we believe that the CE requirement for supervisors should be tied to the renewal period and not to a two year period. Further, such a change would facilitate audits to determine whether or not the requirement has been complied with.

CCR 1833.1(c)

We recommend changes as follows: "A supervisor shall give at least one (1) week's prior written notice to a trainee or intern of the supervisor's intent not to sign for any further hours of experience for such person. . ."

These suggested changes would clarify intent and accurately reflect that a supervisor signs for hours, but does not certify them.

CCR 1833.1(e)

We recommend changes as follows: "In any setting that is not a private practice, a supervisor shall evaluate the site(s) when a trainee or intern will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provide(s) experience that is within the scope of practice of a marriage and family therapist; and (2) the experience is in compliance with the requirements set forth in this section. . . ."

Number (1) above does not identify the intended "scope," e.g., scope of practice or license, scope of competence, etc. Since "this section" does not provide experience requirements, the appropriate section(s) should be identified or (2) should be omitted.

Board Approved Providers, CCR1887.7

We recommend that the regulations specifically state that the Board has a responsibility to send renewal notices to Board Approved Providers of Continuing Education that would specify as follows:

"The Board shall send a renewal notice, at least thirty (30) days prior to the expiration, to any continuing education provider approved by the Board, to the address of record for such provider."

CCR 1887.75(d)

We recommend changes as follows: "Submission of a letter stating that no courses were presented while the provider's approval status was expired. If a course was presented during that time, the letter shall state that all participants have been notified that the course was not valid for continuing education credit for licensees of the Board of Behavioral provider's approval status at the time of the completion of the continuing education was expired.

We would also recommend that this letter contain a sentence something like: The letter shall also advise the participant that the continuing education hours will not be disallowed by the BBS solely because of the expired approval status of the provider.

We have concerns about the Board disallowing continuing education that was gained in good faith by a licensee from a provider that he/she believed to be, and who he/she may even have verified with the BBS to be, an appropriately approved CE provider. The educational information delivered and acquired would have been the same had it been taken from a provider whose approval status was current vs. a provider whose approval status expired. The provider should suffer the consequences, not the licensee who acted

in good faith and relied upon the representations made by the provider in advertising (BBS provider number displayed in CE promotional information) and otherwise.

Applications, CCR 1805(b)

We have concerns about the proposal to require a 180-day waiting period between examinations for any applicant retaking an examination. The Board needs to have the latitude to allow for a lesser period of time when there may be reasons for such that are beyond the control of the applicant. For example, if an applicant has taken an exam that proved to be faulty but not due to the fault of the examinee, that person should not be expected to wait 180 days to take a new exam. Such person has already been disadvantaged and should be permitted to take the examination as soon as a new version of the exam is available.

Examination Application Fees, CCR 1816.4

The application form identified in this section should bear the same title used for the same form in other parts of the licensing law and regulations. Elsewhere, this application is referred to as the "MFT Request for Examination."

Inactive License Fees, CCR 1816.6

Regarding (d), (e), and (f) of this section, we are curious why there is no delinquency fee charged for the delinquent inactive license?

Delinquency Fees, CCR 1816.7

The title of this section should be changed from Delinquent Fees to "Delinquency Fees" since the fees are referred to as delinquency fees throughout the section.

We respectfully request that the Board give thoughtful consideration to our proposed changes, requests for consideration, and questions with regard to these various proposed regulations. We thank you for considering our recommendations to clarify the regulations and to make them more understandable.

Sincerely,



Mary Riemersma
Executive Director


MR/

Blank Page



"stacey peyer"
<speyer@csulb.edu>
10/03/2006 01:32 PM

To <Christy_Berger@dca.ca.gov>
cc
bcc
Subject RE: Regulations

History:  This message has been forwarded.

Thanks Christy. I actually received this in hard copy in today's mail. Justin must have sent it. Anyway, the problem as I see it is this. I have wanted to provide supervision and am often asked to do so. Could be individual, group or both. However, as I teach full time in the Department of Social Work at California State University Long Beach, and have since 1994, I have not practiced full time since 1994. From 1995-2000 or so, I was a contract therapist seeing a couple of clients per week with a non-profit, but that was not enough to meet the regulations for MFT's due to the number of client hours. For ACSW's, perhaps I could have still provided supervision for the first two years after I stopped seeing clients for the non-profit, if indeed there was never a requirement for a minimum number of hours. But even if that were the case, and it looks to me now that it has been, once I got to the place where I had not seen my own clients in five years I would have had to stop providing supervision. And so I would be exactly where I am now.

The proposed change in the language is good as it clarifies the supervision vs. psychotherapy issue. But, since I and many others who no longer practice traditional psychotherapy have been unable to supervise under the current language, we would continue to be unable to since the language requires supervision or psychotherapy in the last 5 years. (I do many other things that keep me in the practice loop, as many others do, including but not limited to teaching Integrative Field Seminar, being a Field liaison for 30 plus MSW students each academic year and 8 in the summer, I maintain my clinical license, I do consulting, I do adoption work, support groups, etc)

I imagine that it is important to look at the purpose of the change in language. I looked at the Initial Statement of Reasons but do not really see much to explain the reason, other than to be more explicit. Is one of the reasons for the change to allow those who have been unable to provide supervision to do so? If that is part of the reason, it seems this change does not go far enough.

Please let me know your thoughts and if there is anything else I can do to contribute. Thx.

Stacey Peyer
LCSW 184

-----Original Message-----

From: Christy_Berger@dca.ca.gov [mailto:Christy_Berger@dca.ca.gov]
Sent: Tuesday, October 03, 2006 10:32 AM
To: speyer@csulb.edu
Subject: Regulations

I have attached the proposed language for your reference. Section 1870

refers to supervision of Associate Clinical Social Workers, and Section
1833.1 refers to supervision of Marriage and Family Therapist Interns.

Look forward to hearing from you!

Christy Berger
Board of Behavioral Sciences
(916) 574-7847

(See attached file: 1870 ProposedLanguage-R.doc) (See attached file: 1833.1
Proposed Language-R.doc)

ATTACHMENT

Agenda Item IX

Comments Table - Attachment 2

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Board of Behavioral Sciences
Requirements for Supervisors
45-Day Comments

Comment Re:	Summary of Comment	Staff Response	Modification Needed?	Section/Area
1833.1(a)(6)(A)	CAMFT* recommends substituting the language “persons licensed by the Board who provide supervision” for “supervisors who are licensed by the board.” Explanation – supervisors are not licensed as “supervisors” by the Board.	AGREE	YES – Modify 1833.1(a)(6)(A), 1833.1(a)(6)(B), and 1870(a)(4)(A) in order to clarify the language	1833.1(a)(6)(A) 1833.1(a)(6)(B) 1870(a)(4)(A)
1833.1(a)(6)(A)	CAMFT* recommends that the six (6) hours of supervision training or coursework be tied to the supervisor's renewal period and not to a two-year period. Explanation – such a change could facilitate audits to determine whether or not the requirement has been complied with.	AGREE	YES – Modify 1833.1(a)(6)(A) in order to have the ability to facilitate audits, if necessary.	1833.1(a)(6)(A)
1833.1(c)	CAMFT* recommends that the proposed language be modified as follows: “A supervisor shall give at least one (1) week’s <u>prior</u> written notice to a trainee or intern of the supervisor's intent not to certify <u>sign</u> <u>for</u> any further hours of experience for such person...” Explanation – the recommended modification would clarify intent and accurately reflect that a supervisor <u>signs</u> for hours, but does not <u>certify</u> them.	AGREE	YES – Modify 1833.1(c) in order to clarify that supervisors <u>sign</u> for hours of experience.	1833.1(c)
1833.1(e)	CAMFT* recommends that the proposed language be modified to identify the intended “scope,” e.g., scope of practice or license, etc.	AGREE	YES – Modify 1833.1(e) in order to indicate “scope of <u>practice of a marriage and family therapist</u> ”	1833.1(e)
1833.1(e)	CAMFT* recommends that the specific section of law be cited that addresses experience requirements for MFT Interns or Trainees.	AGREE	YES – Modify 1833.1(e) in order to reference BPC 4980.43.	1833.1(e)

*California Association of Marriage and Family Therapists

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AGENDA ITEM X

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members **Date:** October 31, 2006
From: Justin Sotelo
Regulations Analyst **Telephone:** (916) 574-7836
Subject: **Agenda Item X. - Review and Possible Action on Proposed Changes in the Regulations - 16 CCR Sections 1816.7, 1887.7, 1887.75, and 1887.77, Delinquency Fees for Continuing Education Providers**

Background

On July 27, 2006, the Board approved proposed changes in the regulations that would amend 16 CCR Sections 1816.7 and 1887.7 and adopt Sections 1887.75 and 1887.77. These proposed changes were recommended by the Budget and Efficiency Committee at its meeting on June 21, 2006.

This purpose of this proposal is to: 1) implement a \$100 delinquency fee for continuing education providers who renew an expired approval (at any time within one year after its expiration) in order to reduce the processing of new provider applications; 2) prevent a provider from applying for a new provider approval number within one year of an existing approval's expiration unless the provider has undergone a change of ownership; 3) prevent courses from being presented for continuing education credit when a provider's approval is expired; 4) set forth requirements for renewal of an expired approval (under Section 1887.75); and 5) set forth a one-year time limit for renewal of an expired approval.

Discussion

The proposed changes in the regulations were noticed on September 29, 2006 and comments regarding these proposed changes were received from the California Association of Marriage and Family Therapists. The comments, summaries of the comments, and staff recommendations regarding those comments are attached for the Board's review and discussion.

Recommendation

The Board is asked to consider written and oral comments received regarding these proposed changes, determine if modifications should be incorporated into the proposed language, and approve the final language. Should modifications to the originally proposed language be required (those that are nonsubstantial, grammatical in nature, or sufficiently related to the original proposal), the resulting modifications will be made available to the public for at least 15 days.

Attachments

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Agenda Item X

Comments - Attachment 1

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Comments cited from the California Association of Marriage and Family Therapists' letter to the Board of Behavioral Sciences, dated October 20, 2006:

16 CCR Section 1816.7, Delinquent Fees

"...The title of this section should be changed from Delinquent Fees to 'Delinquency Fees' since the fees are referred to as delinquency fees throughout the section..."

16 CCR Section 1887.7, Board Approved Providers

"...We recommend that the regulations specifically state that the Board has a responsibility to send renewal notices to Board Approved Providers of Continuing Education that would specify as follows:

'The Board shall send a renewal notice, at least thirty (30) days prior to the expiration, to any continuing education provider approved by the Board, to the address of record for such provider.'..."

16 CCR Section 1887.75(d), Renewal of Expired Approval

"...We recommend changes as follows: 'Submission of a letter stating that no courses were presented while the provider's approval status was expired. If a course was presented during that time, the letter shall state that all participants have been notified that the ~~course was not valid for continuing education credit for licensees of the Board of Behavioral Sciences~~ provider's approval status at the time of the completion of the continuing education was expired.'..."

"...We would also recommend that this letter contain a sentence something like: The letter shall also advise the participant that the continuing education hours will not be disallowed by the BBS solely because of the expired approval status of the provider..."

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Agenda Item X

Comments Table - Attachment 2

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Board of Behavioral Sciences
Delinquency Fees for Continuing Education Providers
 45-Day Comments

Comment Re:	Summary of Comment	Staff Response	Modification Needed?	Section/Area
1816.7	CAMFT* recommends that the title of this section be changed from "Delinquent Fees" to "Delinquency Fees" since the fees are referred to as delinquency fees throughout the section.	AGREE	YES – Change title of 1816.7 to "Delinquency Fees."	1816.7
1887.7	CAMFT* recommends that the regulation specifically state that the Board has a responsibility to send renewal notices to Board Approved Providers of Continuing Educations at least thirty (30) days prior to their approval expirations.	AGREE	YES – Modify 1887.7 in order to state that the Board has a responsibility to send renewal notices at least thirty (30) days prior to expiration.	1887.7
1887.75(d)	CAMFT* recommends that the proposed language be modified as follows: "Submission of a letter certifying <u>stating</u> that no courses were presented while the provider's approval <u>status</u> was expired."	AGREE	YES – Modify 1887.75(d) in order to indicate that the letter <u>states</u> instead of <u>certifies</u> .	1887.75(d)
1887.75(d)	CAMFT* recommends that the proposed language be modified to delete language stating that the letter shall certify that "all participants have been notified that the course was not valid for continuing education credit for licensees..."	NOTED	YES – Modify 1887.75(d) in order to indicate that CE credit will be granted to a participant if the provider renews its approval status within one year of its expiration.	1887.75(d)
1887.75(d)	CAMFT* recommends that the letter contain a sentence advising the participant that the continuing education hours will not be disallowed by the Board solely because of the expired approval status of the provider.	NOTED	YES – Modify 1887.75(d) in order to indicate that CE credit will be granted to a participant if the provider renews its approval status within one year of its expiration.	1887.75(d)

*California Association of Marriage and Family Therapists

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AGENDA ITEM XI

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**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Board Members **Date:** October 31, 2006
From: Justin Sotelo
Regulations Analyst **Telephone:** (916) 574-7836
Subject: **Agenda Item XI. - Review and Possible Action on Proposed Changes in the Regulations – 16 CCR Sections 1805, 1806, 1833.3, 1816, 1816.1, 1816.2, 1816.4, 1816.6, 1854, 1855, 1856, 1857, and 1858**

Background

On July 27, 2006, the Board approved proposed changes in the regulations that would do the following:

Amend Section 1805 in order to - delete language referring the oral examination which is no longer administered by the Board; and, establish a 180-day waiting period between examinations for any applicant retaking an examination in order to ensure that the applicant take a different version of the examination.

Amend Section 1806 & Repeal Section 1833.3 in order to - resolve the discrepancy between the two regulations, providing all candidates with a one-year period in which to take an examination to avoid abandonment of their application.

Amend Sections 1816, 1816.1, 1816.2, 1816.4, and 1816.6 in order to - implement non-substantive changes that would restructure the regulations or make text revisions in order to: provide clarity; improve structure and order; provide consistency across the practice acts; and remove duplicative, outdated, or unnecessary language.

Amend Section 1854 in order to - provide language that is consistent with language under SB 1475, which would adopt BPC Section 4989.20 and instead reference “educational institution approved by the board...” under that new statute.

Amend Section 1856 and Repeal Sections 1855 and 1857 in order to - delete/repeal outdated grandparenting provisions.

Amend Section 1858 in order to - delete provisions that will instead fall under BPC 4989.54 (SB 1475).

Discussion

The proposed changes in the regulations were noticed on September 29, 2006 and comments regarding these proposed changes were received from the California Association of Marriage and Family Therapists. The comments, summaries of the comments, and staff recommendations regarding those comments are attached for the Board’s review and discussion.

Recommendation

The Board is asked to consider written and oral comments received regarding these proposed changes, determine if modifications should be incorporated into the proposed language, and approve the final language. Should modifications to the originally proposed language be required (those that are nonsubstantial, grammatical in nature, or sufficiently related to the original proposal), the resulting modifications will be made available to the public for at least 15 days.

Attachments

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Agenda Item XI

Comments - Attachment 1

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Comments cited from the California Association of Marriage and Family Therapists' letter to the Board of Behavioral Sciences, dated October 20, 2006:

16 CCR Section 1805(b), Applications

"...We have concerns about the proposal to require a 180-day waiting period between examinations for any applicant retaking an examination. The Board needs to have the latitude to allow for a lesser period of time when there may be reasons for such that are beyond the control of the applicant. For example, if an applicant has taken an exam that proved to be faulty but not due to the fault of the examinee, that person should not be expected to wait 180 days to take a new exam. Such person has already been disadvantaged and should be permitted to take the examination as soon as a new version of the exam is available..."

16 CCR Section 1816.4, Examination Application Fees

"...The application form identified in this section should bear the same title used for the same form in other parts of the licensing law and regulations. Elsewhere, this application is referred to as the 'MFT Request for Examination.'..."

16 CCR Section 1816.6, Inactive License Fees

"...Regarding (d), (e), and (f) of this section, we are curious why there is no delinquency fee charged for the delinquent inactive license?..."

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Agenda Item XI

Comments Table - Attachment 2

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Board of Behavioral Sciences
Notice #3
 45-Day Comments

Comment Re:	Summary of Comment	Staff Response	Modification Needed?	Section/Area
1805(b)	Re: the proposed 180-day waiting period between examinations, CAMFT* recommends that "...the Board have the latitude to allow for a lesser period of time when there may be reasons for such that are beyond the control of the applicant."	AGREE	YES – modify 1805(b) in order to have the latitude to allow for a lesser period of time, if necessary.	1805(b)
1816.4	CAMFT* recommends that the application form identified in this section bear the same title used for the same form in other parts of the licensing law and regulations.	AGREE	YES – Modify 1816.4 in order to have the application form identified in this section bear the title, "MFT Request for Examination."	1816.4
1816.6	CAMFT* asks: "Regarding (d), (e), and (f) of this section, we are curious why there is no delinquency fee charged for the delinquent inactive license?"	Noted that a clarification in the proposal is needed.	YES – Modify 1816.6(d), (e), and (f) in order to clarify that delinquency fees are paid in addition to renewal fees.	1816.6(d), 1816.6(e), 1816.6(f)

*California Association of Marriage and Family Therapists

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